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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

FEB 05 2002

AZ CORP COMMISSION
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IN THE MATTER OF US WEST COMMUNI-
CATIONS, INC.'S COMPLIANCE WITH
§ 271 OF THE TELECOMMUNICATIONS
ACT OF 1996

Docket No. T-00000A-97-238

**COX ARIZONA TELCOM, L.L.C.'S
SUPPLEMENTAL COMMENTS ON POTENTIAL IMPACT
OF QWEST'S PROPOSED LOCAL SERVICE FREEZE TARIFF ON
PUBLIC INTEREST,
LOCAL NUMBER PORTABILITY
AND OTHER 271 ISSUES**

Cox Arizona Telcom, L.L.C. ("Cox") submits the following supplemental comments on the potential impact of Qwest's proposed Local Service Freeze (LSF) tariff. Cox believes that the proposed LSF tariff, if approved, may affect several 271 issues including the Public Interest element, Local Number Portability (Checklist Item 11), and Operational Support Systems.

On January 28, 2002, Qwest filed a tariff proposing to offer a new telecommunications product/service in Arizona that would allow Qwest's local service customers to place local carrier freezes on their accounts. A copy of the tariff filing is attached as *Exhibit A*. According to the proposed tariff, if a Qwest customer has "Local Service Freeze," Qwest will require that customer to contact Qwest "directly" before the customer can change local service from Qwest to a CLEC. Presently, a Qwest customer only needs to make one phone call to the CLEC to switch service from Qwest to that CLEC.

The filing of the LSF tariff is the culmination of a series of activities related to Qwest's initial decision to unilaterally implement a local service freeze. On December

1 18, 2001, Qwest issued an email announcement stating that, effective January 17, 2002,
2 Qwest will offer a new telecommunications product/service that would allow Qwest's
3 local service customers to place local carrier freezes on their accounts. On December 28,
4 2001, Cox sent a letter to Qwest raising several concerns and questions about the freeze
5 and requesting that Qwest either cancel the freeze service or file a proposed tariff with this
6 Commission. On January 7, 2002, Qwest responded to Cox's letter contending that the
7 local service freeze responds to "customer needs and state regulatory concerns," but
8 without asserting that local service slamming was occurring in Arizona or attempting to
9 quantify any potential problem. In light of Qwest's intent to unilaterally implement the
10 freeze, Cox filed an application requesting that the Arizona Corporation Commission issue
11 an order to show cause to Qwest to stay implementation of Qwest's proposed local carrier
12 freeze service. A copy of the Application (which includes the email announcement and
13 the correspondence between Cox and Qwest) is attached as *Exhibit B*. In response to the
14 Application, Qwest stated that it would file the LSF tariff and that an Order to Show Cause
15 hearing was not necessary.

16 The LSF tariff filing is particularly unenlightening about the actual operation of the
17 tariff. Qwest has provided only very limited information about the operational
18 implications on co-carriers. Without clear information about how Qwest will implement
19 and conduct the service, consumers and competition are at Qwest's mercy regarding
20 potentially evolving and changing procedures that affect the ability of the consumer to
21 switch local providers. The potential impacts could affect whether or not Qwest has met
22 all of its obligations under Section 271.

23 There are two areas of potential concern to Cox regarding Qwest's Section 271
24 compliance: the Public Interest element and Local Number Portability. With respect to
25 the Public Interest element, an LSF tariff casts significant doubt on whether the market is
26 irreversibly opened to competition, particularly when Qwest also has a Win Back tariff in
27 place. First, Qwest can damage nascent residential local competition by using the millions

1 of unrelated consumer contacts it receives to solicit local service freezes from customers
2 who do not need it and would otherwise not have requested the service. That allows
3 Qwest to build a significant barrier to CLEC entry into the market. Second, once that LSF
4 barrier is constructed, Qwest can take advantage of the requirement that customers
5 "directly" contact Qwest to lift the freeze. There is no apparent restriction that would
6 prevent Qwest from attempting to use the freeze removal contact as a customer retention
7 vehicle through its Win Back tariff. Indeed, the LSF tariff is the perfect scheme for Qwest
8 to *immediately* identify customers eligible for Win Back discounts and to win them back
9 before they ever physically transfer to a CLEC. Third, it is not known how or when a
10 CLEC will know if a freeze is in place for a particular customer. Lack of timely
11 knowledge can lead to frustration and dissatisfaction on the part of the customer who is
12 trying to switch carriers. By using these tactics, over time Qwest will create significant
13 barriers to exit for customers who may later choose service from a Qwest competitor.
14 Qwest also will chill competition by erecting significant barriers to a CLEC's ability to
15 fairly compete for customers.

16 The FCC has recognized that a local service freeze can have particularly
17 detrimental impacts on emerging competition. In FCC 98-334, the FCC recognized, while
18 barely stopping short of prohibiting local carrier freezes, that a local carrier freeze can
19 have a particularly adverse impact on the development of competition in nascent markets.¹
20 The FCC acknowledged and discussed a litany of potential anticompetitive activities and
21 impacts that may result from the implementation of a local carrier freeze.² Indeed, the
22 increased difficulty for Qwest customers to switch to a competitor under the proposed LSF
23 tariff will assist Qwest in retaining its massive market share. The FCC noted that the
24 added step of calling an ILEC is sometimes all it takes to prevent a customer from
25

26 ¹ FCC 98-334, Paragraphs 127, 135.

27 ² FCC 98-334, Paragraphs 113 to 118.

1 switching carriers and is perhaps the main reason that it concluded that preferred carrier
2 freezes have the potential to be implemented in an anticompetitive manner.³ Given
3 Qwest's enormous market dominance in Arizona, the FCC's concerns about the
4 anticompetitive effects of a local service freeze are amplified.

5 The proposed LSF tariff also implicates Checklist Item 11 – Local Number
6 Portability (LNP) – as well as OSS testing involving LNP.⁴ The LSF adds a critical step to
7 the customer transfer process. If a customer has LSF, the pre-ordering and ordering
8 processes, including LNP, for all customer transfers must take into account the potential
9 additional step of having the LSF lifted. That potentially enormously burdensome step
10 was not considered in any of the OSS testing, yet it is a single step that could jeopardize
11 the transfer if not handled properly by Qwest. Moreover, there are several operational
12 issues that may require specific commitments from Qwest on procedures and timing. For
13 example, if a customer calls Qwest to remove the freeze, it is not known how long will it
14 take for the freeze to be lifted or what is an appropriate time frame for Qwest to lift the
15 freeze. The lifting of the freeze would be necessary to avoid having a CLEC's local
16 service request to port a customer rejected by Qwest. Further, the CLEC must know *when*
17 the freeze is lifted so that it can avoid having its personnel repeatedly transmit port
18 requests that will be rejected if Qwest has not completed the activity. The timing of lifting
19 the freeze will determine how and when a customer will be able to switch to a facilities-
20 based CLEC because it impacts the time of the port, the local government permitting for
21 the new provider's drops, the scheduling of truck rolls for installation, the time the
22 customer would need to be at home to await the technician, etc. If the interval is not short
23

24 ³ FCC 98-334, Paragraph 115.

25 ⁴ Although Cox and Qwest had resolved their prior LNP issues in this docket, the
26 implementation of the LSF tariff would raise additional issues that would need to be addressed.
27 Qwest is the one that chose to file for the tariff and potentially interject new issues in this docket.
They cannot fairly argue that the Commission cannot review new issues of Qwest's own cause.

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1 and there are no guidelines or penalties associated with Qwest's non-performance, the
2 entire porting process is put in disarray. This aspect of local number portability was not
3 discussed in the Qwest 271 proceeding regarding Checklist Item 11 nor was it
4 contemplated in the OSS Testing. As such, Cox believes that the Commission will need to
5 consider the impact of the LSF tariff (if it is approved) in the context of the 271
6 proceeding even if it means re-opening items that were deemed closed.

7 Conclusion

8 Qwest's proposed LSF tariff has not yet been approved and there is not yet any
9 information about how the tariff will be marketed or about the operational impacts on
10 Qwest's competitors such as Cox. Cox is submitting these supplemental comments in an
11 effort to provide timely notice of Cox's concerns regarding the potential impact of an LSF
12 tariff on this docket. However, Cox reserves the right to submit additional comments on
13 the impacts of the LSF tariff in this docket should the Commission approve some form of
14 LSF tariff or should the operational impacts of such a tariff be determined.

15
16 RESPECTFULLY SUBMITTED February 5, 2002.

17
18 COX ARIZONA TELCOM. L.L.C.

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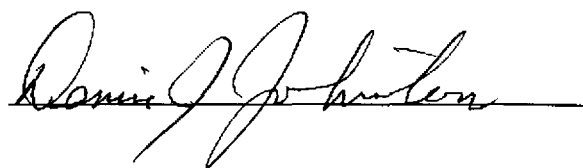
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Exhibit A

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Maureen Arnold
Director - Regulatory Matters



January 28, 2002

Honorable William A. Mundell - Chairman
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: Local Service Freeze

Dear Chairman Mundell:

The attached pages of Qwest's Exchange and Network Services Price Cap Tariff are being filed to amend its terms and conditions and permit customers the option of instituting a freeze of their local service provider. This allows customers greater control of their service and the ability to prevent an unauthorized change of their local service provider. Qwest's offering of a local service freeze (LSF) will further assist the Arizona Corporation Commission (Commission) in accomplishing the consumer protection goals that have been articulated throughout the proposed slamming and cramming rules currently under review in Arizona. Although LSF is not addressed in the current draft of the proposed rules, the protection afforded consumers through this tariff is consistent with the same issues addressed by the proposed rules and with the stated desire of the Commission to protect Arizona consumers from unscrupulous practices.

On December 13, 2001, Qwest notified Commission Staff that it would allow customers the choice of freezing their local service provider. Qwest planned on making LSF available to customers beginning January 17, 2002. On January 11, 2002, Cox Arizona Telecom L.L.C. filed an application requesting an order to show cause to stay implementation of Qwest's proposed LSF. As part of its application Cox stated: "Qwest has not filed a tariff or provided any substantial information to this Commission (or other interested or affected parties) about its proposed freeze service." Cox further alleged that Qwest's rationale for implementing LSF without a tariff was not supported and that the Commission should determine whether a local service freeze was justified.

Qwest opposed Cox's application and the joinders of AT&T, WorldCom, and Time Warner in that application. However, Staff subsequently contacted Qwest to convey its belief that a tariff should be submitted for the Commission's review and approval. Although Qwest does not agree that LSF is a service or a product, or that a tariff filing is required, Qwest agreed to delay implementation and submit a tariff for LSF as a term and condition of the provision of basic local exchange service.

The Commission has never required that Qwest submit its customer freeze procedures as tariffs in Arizona. Various telecommunications companies in Arizona have offered carrier freezes in

connection with long distance service since the late 1980s. Additionally, at the time equal access was implemented in 1996, the Commission permitted the offering of freezes in connection with local long distance service without the requirement to file a tariff. Qwest's proposed LSF does not differ materially from any of these other freezes currently offered in Arizona. In each case, a customer may request to place a freeze on their account, and that request must be properly verified by the company administering the freeze in accordance with federal law. Once this has been done, the carrier cannot be changed until the customer contacts the administering company directly to lift the freeze.

In FCC 98-334, the Federal Communications Commission approved rules permitting the offering of a freeze in connection with a customer's local service provider. In adopting these rules, the FCC stated the rules "appropriately balance several factors, including consumer protection, the need to foster competition in all markets, and our desire to afford carriers flexibility in offering their customers innovative services such as preferred carrier freeze programs." Qwest's LSF option is designed to be fully compliant with the rules adopted by the FCC.

The current draft of slamming and cramming rules for Arizona (Docket No. RT 00000J-99-0034) addresses freezes for interLATA and intraLATA telecommunications services. Although the proposed rules do not address freezes for local service providers, they could still be modified to do so. By addressing LSF in the Slamming/Cramming Docket, the rules would be consistent in that all types of freezes would be addressed in one rulemaking. It would also address Cox's request in Docket No. T-03471A-02-0025, filed January 22, 2002.

The Commission has previously approved a LSF tariff for another local exchange provider, i.e., SBC Telecom, Inc. (SBC). On November 17, 2000, SBC filed a tariff, which permits it to offer what it calls a "Preferred Carrier Freeze" (PCF). SBC's tariff states that:

"PCF allows Customers to designate their local long distance (intraLATA) provider, long distance (interLATA) provider, and a local exchange service provider as permanent choices which may not be changed absent further authorization from the Customer".

SBC's tariff became effective by operation of law on December 17, 2000. Qwest's proposed LSF tariff appears to be substantially similar to the SBC tariff for PCF. Like Qwest is proposing here, SBC included PCF in the "Regulations" portion of its tariff.

Under Qwest's proposal, customers requesting a freeze of their local service provider must have their request verified through one of the following three means, consistent with the FCC's rules.

- Written or electronic signed authorization
- Electronic authorization
- Independent third-party verification.

Honorable William A. Mundell
January 28, 2002
Page 3

Once this has been done, the customer's carrier cannot be changed unless the customer requests that the freeze be lifted. The process to lift a freeze is fast and simple. The customer may send a written or electronically signed authorization to Qwest, or may simply call Qwest and request that the freeze be lifted. Further, where a carrier has received an order from a prospective customer who currently has a freeze in effect, the new carrier can simply call Qwest with the customer on the line and have the customer request that the freeze be lifted. In each instance, the freeze can be lifted within 24 hours of the request. There is no charge in connection with either placing or lifting a freeze

This page has been prepared with an effective date of March 4, 2002. Please contact either me, or Reed Peterson at 602-630-8221, if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "MARVEEN ARNOLD". The signature is written in a cursive, somewhat stylized font.

Attachment

cc: Commissioner Jim Irvin
Commissioner Marc Spitzer
Mr. Ernest Johnson -Director, Utilities Division
Legal Division - Arizona Corporation Commission
Cox Arizona Telcom, L.L.C.
AT&T Communications of the Mountain States, Inc.
Time Warner Telecom of Arizona, LLC.
WorldCom, Inc.

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1. APPLICATION AND REFERENCE

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(N)

Issued: 1-28-02

Effective: 3-4-02

2. GENERAL REGULATIONS - CONDITIONS OF OFFERING

2.2 ESTABLISHING AND FURNISHING SERVICE (Cont'd)

2.2.16 LOCAL SERVICE FREEZE

(N)

A. Local Service Freeze

The company permits customers to freeze their local service provider. This will be done for any requesting local exchange customer at no charge. Once the local service provider has been frozen, it may not be changed without the customer directly contacting the Company, consistent with all applicable laws and regulations. At the time a customer contacts the Company to establish a freeze, a representative will advise him/her on how to facilitate a change of provider on a frozen account.

Exhibit B

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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF COX ARIZONA TELCOM,
L.L.C.'S APPLICATION TO THE ARIZONA
CORPORATION COMMISSION TO ISSUE AN
ORDER TO SHOW CAUSE REGARDING
IMPLEMENTATION OF QWEST CORPORA-
TION'S PROPOSED LOCAL CARRIER FREEZE
SERVICE

Docket No. T-03471A-02-_____

APPLICATION

(Expedited Consideration Requested)

Cox Arizona Telcom, L.L.C. ("Cox") requests that the Arizona Corporation Commission ("Commission") issue an order to show cause to Qwest Corporation ("Qwest") to stay implementation of Qwest's proposed local carrier freeze service that will be available to Qwest's Arizona customers beginning January 17, 2002 (without a Commission-approved tariff for the proposed service.) This stay will provide the Commission adequate time to address whether such a freeze is in the public interest given the nascent state of competition (particularly residential competition) and the lack of local carrier slamming in Arizona. The Commission could consider these issues of statewide and industry-wide importance in: (i) the existing Slamming and Cramming rulemaking docket (Docket No. RT-00000J-99-0034); (ii) a new docket; or (iii) a tariff docket filed by Qwest for the proposed local carrier freeze.

In support of this application, Cox states:

1. On December 18, 2001, Qwest issued an email announcement stating

1 that, effective January 17, 2002, Qwest will offer a new telecommunications
2 product/service that would allow Qwest's local service customers to place local carrier
3 freezes on their accounts. According to the email, if a Qwest customer has "Local Service
4 Freeze Protection," Qwest will require that customer to contact both Qwest and the
5 competitive local exchange carrier (CLEC) when the customer wants to switch local
6 service from Qwest to a CLEC. Presently, the customer only needs to make one phone
7 call to the CLEC to switch service from Qwest. A copy of the email announcement is
8 attached at *Exhibit 1*.

9 2. On December 28, 2001, Cox sent a letter to Qwest concerning the
10 proposed local service freeze. Cox raised several concerns and questions about the freeze
11 and requested that Qwest either cancel the freeze service or file a proposed tariff with this
12 Commission. A copy of Cox's letter is attached at *Exhibit 2*.

13 3. On January 7, 2002, Qwest responded to Cox's letter. Qwest contended
14 the local service freeze responds to "customer needs and state regulatory concerns."
15 Qwest did not assert that local service slamming was occurring in Arizona, let alone
16 attempt to quantify any potential problem. A copy of Qwest's response letter is attached at
17 *Exhibit 3*.

18 4. A local service freeze can have particularly detrimental impacts on
19 emerging competition. In FCC 98-334, the FCC recognized, while barely stopping short
20 of prohibiting local carrier freezes, that a local carrier freeze can have a particularly
21 adverse impact on the development of competition in nascent markets.¹ Relevant excerpts
22 of the FCC Order are attached as *Exhibit 4*. The FCC acknowledged and discussed a
23 litany of potential anticompetitive activities and impacts that may result from the
24

25
26 ¹ FCC 98-334, Paragraphs 127, 135.

1 implementation of a local carrier freeze.² Indeed, the increased difficulty for Qwest
2 customers to switch to a competitor will assist Qwest in retaining its massive market share.
3 The FCC noted that the added step of calling an ILEC is sometimes all it takes to prevent a
4 customer from switching carriers and is perhaps the main reason that it concluded that
5 preferred carrier freezes have the potential to be implemented in an anticompetitive
6 manner.³ By forcing customers to call Qwest as well as the CLEC to switch, Qwest will
7 subject the customer to "winback" scripts, or other efforts to keep that customer with
8 Qwest. That is particularly troublesome in Arizona where Qwest has a "winback" tariff
9 already in place. Given Qwest's enormous market dominance in Arizona, the FCC's
10 concerns about the anticompetitive effects of a local service freeze are amplified.

11 5. In light of these potential adverse effects, the FCC has clearly given
12 state public utility commissions the ability to adopt moratoria (or other requirements) on
13 the imposition or solicitation of intrastate preferred carrier freezes.⁴ In effect, the FCC
14 acknowledged that states are in the best position to know if local carrier slamming is a
15 problem, if a freeze may have unwarranted anticompetitive impacts on the emerging
16 competitive markets, the potential for inappropriate conduct by the carrier offering the
17 freeze, etc.⁵ However, here in Arizona, Qwest on its own initiative has decided that local
18 carrier freezes are appropriate despite the lack of any local carrier slamming problems in
19 the state. Qwest apparently believes that this Commission's consideration of the important
20 issues surrounding a freeze is not necessary. Qwest has not filed a tariff or provided any
21 substantial information to this Commission (or other interested or affected parties) about
22

23
24 ² FCC 98-334, Paragraphs 113 to 118.

25 ³ FCC 98-334, Paragraph 115.

26 ⁴ FCC 98-334, Paragraph 137.

⁵ Id.

1 its proposed freeze service. Qwest's letter to Cox is equally unenlightening about just how
2 this new service will work. Cox believes that it is this Commission, not Qwest, that
3 should decide whether local carrier freezes are appropriate for Arizona at this time.

4 6. In its response to Cox, Qwest asserts various justifications for its
5 implementation of the freeze without a tariff. Cox believes that those justifications are not
6 supported and that, again, this Commission should assess whether a local service freeze is
7 justified and, if so, how it should be implemented. For example, Qwest asserts:

- 8 a. Because the freeze is not a service (but rather a "practice or method")
9 and there is no charge, it does not have to be tarified.

10 Qwest's own notice to CLECS (attached as Exhibit 1) calls this a "service."
11 Regardless, A.R.S. § 40-250(b) addresses "practices" which do not have the effect of
12 imposing or increasing rates or charges. Moreover, there are many tarified services for
13 which there is not a charge. A tariff filing provides notice to interested parties and the
14 ability to intervene to support or oppose such a tariff, as well as to suggest language and
15 safeguards that should be included, regardless of whether there is a charge.

- 16 b. The freeze is analogous to PIC/LPIC freezes which are not tarified.

17 There are material differences between PIC/LPIC freezes regarding toll service and
18 a local carrier freeze. First, there has been a nationwide problem with slamming with
19 respect to long distance (LD) carriers that has justified a need for PIC/LPIC freeze
20 services. Second, the LD market is a fully developed and competitive market, unlike the
21 local exchange market. Third, for LD, Qwest as the dominant LEC, primarily facilitates
22 the reprogramming of its switch to accommodate LD carriers and its customers. Fourth
23 and most importantly, Qwest has no (current) interest in most LD changes. However, for
24 local exchange carrier changes, Qwest faces a major conflict of interest because almost
25 every change of local service provider involves a customer that is leaving Qwest.
26 Facilitating such switches is not in Qwest's economic or competitive interest. Due to this

1 conflict and the potential for anticompetitive mischief, there needs to be a tariff and/or
2 rules and guidelines to eliminate such issues.

- 3 c. Qwest's local service freeze responds to customer needs and state
4 regulatory concerns.

5 Although Qwest mentions a few states that have allowed local service freezes,
6 Qwest does not identify any "regulatory concerns" or "customer needs" in Arizona.
7 Indeed, it does not appear that there is a local service slamming problem in Arizona.
8 Regardless, the Commission should decide what is in the public interest, not Qwest or the
9 regulatory bodies in other states.

- 10 d. Qwest provided information to Cox regarding the implementation of
11 the freeze in Washington on March 2, 2001.

12 Even if Qwest did provide such information, Cox does not offer service in
13 Washington and would have no reason to consider such a notice in terms of its operational
14 impacts for the State of Arizona.

- 15 e. Qwest will provide wholesale implementation documentation to CLECs
16 on January 11, 2002.

17 This is less than one week away from the scheduled implementation. That is not
18 adequate lead time for CLECs to question, challenge such procedures or to implement
19 their own procedures to deal with the freeze. Such changes will impact several key
20 operational areas that have responsibilities over processing customer requests to switch
21 carriers.

22 7. Moreover, Qwest asserted in response to Cox that it will act in
23 accordance with the FCC rules concerning local service freezes. Although the FCC has
24 adopted rules regarding the implementation of a local service freeze (*see* 17 CFR
25 § 64.1190 (attached as part of *Exhibit 4*)), Qwest has not provided adequate information to
26 determine whether the proposed local service freeze meets the requirements of the rules.

1 The minimal information Qwest has provided raises significant doubt that it
2 will meet the FCC requirements. For example, the customer "notice" attached to the
3 Qwest letter is somewhat terse, vague and alarmist – not clear and neutral as required by
4 47 CFR § 64.1190 (d)(1). It is also disingenuous to CLECs in that the notice itself implies
5 that there is a problem with local carrier slamming when in fact no such problem exists in
6 Arizona. This will further undermine the development of a competitive market in Arizona
7 to the detriment of consumers and CLECs while bolstering Qwest's ability to retain its
8 market share.

9 Without clear information about how Qwest will implement and conduct the
10 service – as would be set forth in a tariff or a Commission rule – consumers and
11 competition are at Qwest's mercy regarding potentially evolving and changing procedures
12 which affect the ability of the consumer to switch local providers. For example, it is not
13 known how or when a CLEC will know if a freeze is in place for a particular customer.
14 Lack of timely knowledge can lead to frustration and dissatisfaction on the part of the
15 customer who is trying to switch carriers. Moreover, if a customer calls Qwest to remove
16 the freeze, it is not known how long will it take for the freeze to be lifted. The lifting of
17 the freeze would be necessary to avoid having a CLEC's local service request to port a
18 customer rejected by Qwest. The timing of lifting the freeze will determine how and when
19 a customer will be able to switch to a facilities-based CLEC because it impacts the time of
20 the port, the local government permitting for drops, the scheduling of truck rolls for
21 installation, the time the customer would need to be at home to await the technician, etc.
22 If the interval is not short and there are no guidelines or penalties associated with Qwest's
23 non-performance, the entire porting process is put in disarray.⁶

24
25 ⁶ This aspect of local number portability was not discussed in the Qwest 271 proceeding
26 regarding Checklist Item 11 nor was it contemplated in the OSS Testing. As such, Cox believes
that the Commission needs to consider the impact of this new practice in the context of the 271

1 It also is unknown whether Qwest will market other products or services to
2 customers who contact Qwest (or whom are contacted by Qwest) for the sole purpose of
3 requesting or removing a freeze. There is no apparent restriction that would prevent
4 Qwest from attempting to use the freeze removal contact as a customer retention vehicle.
5 Potentially even more damaging to nascent residential local competition is the potential
6 that Qwest will use the millions of unrelated consumer contacts it receives to solicit local
7 service freezes to customers who do not need it and would otherwise not have requested
8 the service. Qwest's alarmist bill insert material will likely be matched by alarmist scripts
9 used by its representatives to scare customers into believing their local phone service is at
10 risk. By using these tactics, over time Qwest will create significant barriers to exit for
11 customers who may later choose service from a Qwest competitor.

12 8. Cox requests that, given the critical statewide and industry-wide
13 importance of the issues raised by Qwest's proposed local service freeze and the potential
14 impact on consumers and competition in Arizona, the Commission issue an order to show
15 cause that stays the imminent implementation of Qwest's freeze. Qwest claims that its
16 freeze is for the benefit of consumers, but this Commission is the appropriate judge of
17 what is in the best interest of Arizona consumers. Qwest will not be harmed if the
18 implementation is delayed to allow this Commission to thoughtfully and thoroughly
19 consider the important issues, particularly because there is not a local service slamming
20 problem in Arizona. By staying implementation, this Commission, consumers and other
21 interested or affected parties will have the opportunity to address the proposed local
22 service freeze in the appropriate docket in the appropriate manner.

23 ...

24 ...

25
26 proceeding even if it means re-opening items that were deemed closed.

ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 **RELIEF REQUESTED**

2 WHEREFORE, Cox requests that the Commission issue an order to show
3 cause staying implementation of Qwest's proposed local carrier freeze service to allow the
4 Commission adequate time to address important statewide issues raised by implementation
5 of such a service.

6
7 RESPECTFULLY SUBMITTED on January 11, 2002.

8 COX ARIZONA TELCOM, L.L.C.

9
10 By 

11 Michael W. Patten
12 Roshka Heyman & DeWulf, PLC
13 400 East Van Buren Street, Suite 800
14 Phoenix, Arizona 85004
15 (602) 256-6100

16 **ORIGINAL** and 10 **COPIES** of the foregoing
17 filed January 11, 2002, with:

18 Docket Control
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 **COPIES** of the foregoing hand-delivered
23 January 11, 2002, to:

24 The Honorable William A. Mundell
25 Chairman, Arizona Corporation Commission
26 1200 West Washington
Phoenix, Arizona 85007

ROSIKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
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1 The Honorable Jim Irvin
2 Commissioner, Arizona Corporation Commission
3 1200 West Washington
4 Phoenix, Arizona 85007

5 The Honorable Marc Spitzer
6 Commissioner, Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 Lyn Farmer, Esq.
10 Chief ALJ, Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
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1 Timothy Berg, Esq.
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5 *Counsel for Qwest Corporation*

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FACSIMILE 602-256-6800

> -----Original Message-----

> From: mailouts@qwest.com [mailto:mailouts@qwest.com]

> Sent: Tuesday, December 18, 2001 12:56 PM

> To: Corcoran, Martin (CCI-Atlanta)

> Subject: Local Service Freeze Protection: AZ, IA, MN, MT, NE, NM, WY

>

>

>

> Announcement Date:

>

> December 17, 2001

>

> Effective Date:

>

> January 17, 2002

>

> Document Number:

>

> 12.17.01.F.A000219

>

> Notification Category:

>

> Product Notification

>

> Target Audience:

>

> CLECs, Resellers

>

> Subject:

>

> Local Service Freeze Protection - AZ, IA, MN, MT, NE, NM, WY

>

> This is to advise you of a new telecommunication service product/service, effective January 17, 2002.

>

> Product name: Local Service Freeze Protection

>

> Tariff/catalog/price list reference: No tariff needed except Minnesota, which will be filed on January 15, 2002.

>

> State(s): Arizona, Iowa, Minnesota, Montana, Nebraska, New Mexico, Wyoming

>

> Effective date: January 17, 2001

>

>

>

> Description:

>

> Local Service Freeze Protection allows customers to designate their local service provider as a permanent choice which may not be changed absent further authorization from the customer. A freeze does not prohibit a customer from making changes to their services/provider(s) at

any time. They can also remove a freeze at no charge by contacting Qwest directly with a verbal, written or electronically signed authorization.

>

> Please notify only those resellers with approved resale agreements according to the terms specified in their resale agreement. Advise them that retail offers that are subject to Commission approval and may change. Reseller should monitor filings, since Qwest will not provide notification of changes.

>

>

> If you have any questions or would like to discuss this notice please contact your Qwest Sales Executive, Michael Roll on 612-663-7229. Qwest appreciates your business and we look forward to our continued relationship.

>

> Sincerely,

>

>

> Qwest

>

> cc: Michael Roll

>

> Lynn West-Oliver

>

ROSHKA HEYMAN & DEWULF

ROSHKA HEYMAN & DEWULF, PLC
ATTORNEYS AT LAW
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET
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TELEPHONE NO 602-256-6100
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December 28, 2001

VIA HAND DELIVERY

Ms. Teresa Wahlert
Vice President - Arizona
Qwest Corporation
3033 North Third Street, Tenth Floor
Phoenix, Arizona 85012

Re: Qwest's Proposed Local Carrier Freeze Service

Dear Ms. Wahlert:

On December 18, 2001, Cox Arizona Telcom, L.L.C. (Cox) received the attached email announcement stating that, effective January 17, 2002, Qwest intends to offer a new telecommunication product/service that would allow Qwest's local service customers to place local carrier freezes on their accounts. According to the email, if a Qwest customer has "Local Service Freeze Protection," Qwest will now require that customer to contact both Qwest and the competitive local exchange carrier (CLEC) when the customer wants to switch local service from Qwest to a CLEC. Prior to this, the customer only needed to make one phone call to the CLEC to switch service from Qwest. Cox has several significant concerns about the proposed carrier freeze service and requests that Qwest not implement the service.

Qwest's proposed carrier freeze is clearly anti-competitive. As Qwest seeks the Arizona Corporation Commission's (Commission) approval under Section 271 of the Telecommunications Act of 1996, the proposed additional requirements to switch local carriers raise significant issues about Qwest's true intentions towards competitors. The potential impact on emerging competition will be harsh, particularly in the residential market. For example, additional steps to switch local carriers will confuse, delay and possibly undermine the entire transition process. Such impacts are particularly germane to the pending 271 issues, such as the Public Interest element, and should be brought to the Commission's attention immediately. Moreover, the impact of the proposed freeze service on other checklist items that apparently had been resolved, such as local number portability, would require the Commission to reopen those issues.

Ms. Wahlert

December 28, 2001

Page 2

Moreover, as the FCC has recognized, primarily in FCC 98-334, a local carrier freeze can have a particularly adverse impact on the development of competition in nascent markets.¹ Indeed, the increased difficulty for Qwest customers to switch to a competitor is an overt attempt by Qwest to retain its massive market share. The FCC noted that the added step of calling an ILEC is sometimes all it takes to prevent a customer from switching carriers and is perhaps the main reason that it concluded that preferred carrier freezes have the potential to be implemented in an anticompetitive manner.² By forcing customers to call Qwest as well as the CLEC to switch, Qwest will subject the customer to "winback" scripts, or other efforts to keep that customer with Qwest. That is particularly troublesome in Arizona where Qwest has a "winback" tariff already in place. In light of these potential adverse effects, the FCC has clearly given states the ability to adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes.³

Cox believes that, at this time, there is simply no need for a local service carrier freeze in Arizona. Slamming in local service almost never occurs, and Cox challenges Qwest to present any evidence that Cox or any other CLEC in Arizona is moving customers to its service without their authorization. Indeed, the Commission Staff recognized this fact by *removing* local service carrier freezes from its pending slamming rules. The FCC also has acknowledged that local carrier freezes are unnecessary in markets where competition is developing.⁴ Moreover, implementation and marketing of the service to customers implies that CLECs are, in fact, engaging in local service slamming. Again, such unnecessary disparagement of CLECs is anticompetitive.

If Qwest is intent on implementing the local carrier freeze, the email announcement was cryptic at best and Cox requests that Qwest clarify its proposed service and the anticipated impacts on Qwest/CLEC interaction and operations.

First, it is unclear from the announcement whether the proposed freeze service will be a retail offering, whether it is offered to both residential and business customers or whether there will be any charge for the service. Moreover, although the announcement indicates that "retail offers are subject to Commission approval," it appears that Qwest will not file a tariff or seek Commission approval for the freeze service in Arizona.

Second, although the email announcement was directed to a "target audience" of CLECs and Resellers, it is absolutely silent on the details of operational implementation.

¹ FCC 98-334, Paragraph 134.

² FCC 98-334, Paragraph 114.

³ FCC 98-334, Paragraph 136.

⁴ FCC 98-334, Paragraph 134.

Ms. Wahlert
December 28, 2001
Page 3

and the impact on CLEC interaction with Qwest. Cox is particularly concerned about how its CSRs will know if Qwest customers have the freeze service, how Qwest will handle LSRs from CLECs once the proposed service is in effect and how LSRs and FOCs may be impacted by the existence of the service.

Third, Cox has concerns about how Qwest customers will obtain the proposed service. For example, will all Qwest customers automatically receive the service unless they "opt out" of the service? Will Qwest use the service as a retention tool when a prospective CLEC customer is forced to contact Qwest to remove the freeze?

In sum, given the current state of local competition in Arizona, the lack of a local service slamming problem and the clear anticompetitive impact of the implementation of a local carrier freeze by an incumbent LEC with enormous market share and power, Cox requests that Qwest not implement the proposed local carrier freeze. If Qwest insists on implementing the proposed service, Cox believes that Qwest must file a proposed tariff with the Commission to allow full consideration of the propriety of the local carrier freeze and its potential impacts on related dockets, such as the Arizona 271 docket. It also must identify and clarify the potential operational impacts and requirements on CLECs and their interactions with Qwest with respect to the service.

Cox requests that Qwest respond to this letter by January 7, 2002, to indicate if Qwest intends to proceed with the local carrier freeze service and, if so, what the potential operational impacts on CLECs are anticipated to be. Please do not hesitate to contact either Bradley S. Carroll (623-322-8006) or me if you have any questions.

Sincerely,



Michael W. Patten
Attorney for Cox Arizona Telcom, L.L.C.

Enclosure

cc (with enclosure):

Christie Doherty, Qwest (via facsimile 303-965-3733)
Maureen Arnold, Qwest (via facsimile 602-235-4890)
Timothy Fyke, Qwest (via facsimile 602-912-9447)
Ernest Johnson, Arizona Corporation Commission (via hand delivery)
Douglas Garrett, Cox Arizona Telcom, L.L.C. (via facsimile 510-923-6225)
Bradley Carroll, Cox Arizona Telcom, L.L.C. (via facsimile 623-322-8037)

cox/freeze/lt.doc

> -----Original Message-----

> From: mailouts@qwest.com [mailto:mailouts@qwest.com]

> Sent: Tuesday, December 18, 2001 12:56 PM

> To: Corcoran, Martin (CCI-Atlanta)

> Subject: Local Service Freeze Protection: AZ, IA, MN, MT, NE, NM, WY

>

>

>

> Announcement Date:

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> December 17, 2001

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> Effective Date:

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> January 17, 2002

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> Document Number:

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> 12.17.01.F.A000219

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> Notification Category:

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> Product Notification

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> Target Audience:

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> CLECs, Resellers

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> Subject:

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> Local Service Freeze Protection - AZ, IA, MN, MT, NE, NM, WY

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> This is to advise you of a new telecommunication service product/service, effective January 17, 2002.

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> Product name: Local Service Freeze Protection

>

> Tariff/catalog/price list reference: No tariff needed except Minnesota, which will be filed on January 15, 2002.

>

> State(s): Arizona, Iowa, Minnesota, Montana, Nebraska, New Mexico, Wyoming

>

> Effective date: January 17, 2001

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> Description:

>

> Local Service Freeze Protection allows customers to designate their local service provider as a permanent choice which may not be changed absent further authorization from the customer. A freeze does not prohibit a customer from making changes to their services/provider(s) at

any time. They can also remove a freeze at no charge by contacting Qwest directly with a verbal, written or electronically signed authorization.

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>

>

> If you have any questions or would like to discuss this notice please contact your Qwest Sales Executive, Michael Roll on 612-663-7229. Qwest appreciates your business and we look forward to our continued relationship.

>

> Sincerely,

>

>

> Qwest

>

> cc: Michael Roll

>

> Lynn West-Oliver

>



3033 N. Third Street, Suite
Phoenix, Arizona 85012
(602) 630-1942

Teresa A. Wahlert
Vice President-Arizona
Regional Vice President

January 7, 2002

Michael W. Patten
Attorney for Cox Arizona Telecomm, L.L.C.
Roshka Heyman & DeWulf
One Arizona Center
400 East VanBuren Street, Suite 800
Phoenix, Arizona 85012

Dear Mr. Patten:

As your December 28, 2001 letter stated, Qwest announced its intention to change internal procedures to allow customers the choice of placing a local carrier freeze on their account on December 18, 2001. I appreciate the opportunity to address your concerns with our proposed change. I believe that once we have clarified the proposal you will see that the impact is not germane to pending 271 issues, that allowing customers to choose to protect their accounts is pro-consumer, and that the program is not anti-competitive.

Qwest advised the Arizona Corporation Commission on December 13, 2001 of its plans to permit local exchange customers to freeze their choice of local carriers. The availability of a local service freeze is not a service, but rather a practice or a method. There is no charge for the freeze, so it is not offered under tariff. This is exactly the way that Qwest offers a freeze for customers' providers of long distance service and their providers of local long distance, which have been available for some time.

Qwest's local service freeze responds to customer needs and state regulatory concerns. The availability of a local service freeze permits customers to proactively prevent slamming and to choose to directly control their local telecommunications service provider. Qwest was ordered by the commissions in Colorado and Washington to implement a local service carrier freeze option. It is also a statutory requirement in Utah. Qwest believes that all customers in the states in which Qwest operates should have the same opportunity for this protection. In addition, 21 states outside the Qwest territory have implemented this consumer protection option, many of which have approved 271 even with a local service freeze option.

The Federal Communications Commission (the "FCC") rules outline specific requirements as to how a local exchange carrier offering freezes to its customers and how it is to advise or solicit its customers to establish those freezes. Qwest is offering its local service freeze in full compliance with FCC rules, in terms of its availability (see 47 C.F.R. 64.1190(b); in terms of the communications with Qwest customers (see 47 C.F.R. 64.1190(c) and 47 C.F.R. 64.1190(d)(1)), and in terms of the operational activity for establishing and lifting these freezes (see 47 C.F.R. 64.1190(c) and 47 C.F.R. 64.1190(d)(2) and (3) and 47 C.F.R. 64.1190(e)). Qwest is acting in full compliance with the applicable rules of the FCC, so any argument that Qwest's practice in offering a local service freeze is anti-competitive necessarily means arguing that the FCC rules permit, even encourage, anti-competitive conduct. The FCC rules establish how a local service freeze may be solicited and implemented and thereby ensure that a local service freeze will not be anti-competitive. Thus, so long as Qwest complies with those rules, which you can be sure that Qwest will, the offer of a local service freeze cannot be anti-competitive. The process by which a freeze may be imposed and removed is for the protection of the customer, not to create confusion or delay the change from one provider to another. The rules specifically prohibit the imposition of a local carrier freeze unless the carrier has obtained appropriate verification in accordance with the rules. These rules provide protection against improper imposition of freezes.

Let me clarify that the local service freeze will be available to both residential and business customers. In addition, the freeze be recognized by our wholesale operation, so that reselling carriers will be able to effect a local service freeze, also. Again, there will be no charge for the local service freeze and, of course, it is at the option of the customer.

While it is true that a Qwest customer with a local service freeze who wants to change their local provider, will have to contact Qwest directly, that is already necessary for customers who choose to freeze their selection of long distance or local long distance provider and then subsequently want a change. Customers are already familiar with this process and now will have the same process for the local service provider freeze. But the customer and the competing local exchange provider have a number of options. To be clear, a local service freeze does not prohibit or restrict the customer from changing their local service provider. Rather it simply means that the customer must do so directly by:

- 1) calling Qwest; or
- 2) calling Qwest while the new or competing local exchange carrier's representative is on the line in a three way call; or,

lift the freeze by:

- 1) Calling Qwest; or
- 2) directing a signed writing to Qwest; or
- 3) directing an electronically signed communications to Qwest.

There is nothing in these procedures, which are required by the FCC, that prohibits or even limits the customer's ability to change the customer's preferred provider; it simply ensures that the customer, not another local service provider makes that choice.

Michael W. Patten
January 7, 2002
Page 3

You asked about implementation of the freeze in Washington. On March 2, 2001, Qwest provided notification to all CLECs, including Cox, concerning the implementation process for the state of Washington. The information was distributed specifically to Cox personnel, Tony Markesi and Rob Reynolds. However, the specific wholesale implementation documentation will be provided by Qwest to all CLECs in Arizona, including Cox, no later than January 11, 2002. (See Attachment I for a copy of the transmittal to all CLECs.)

In order for a Qwest customer, residence or business, to establish a local service freeze, the customer must specifically request the freeze from Qwest and the freeze must be verified in accordance with the FCC rules. See 47 C.F.R. 64.1190(d)(2). Those rules require the customer's signed or electronically signed authorization using automatic number identification from the line to be frozen, or a recorded, oral verification conducted by an independent third party. There is no way that a local service freeze can be established unless the customer clearly wants and chooses to establish such a freeze.

Qwest customers will receive a bill insert detailing the availability of the local service freeze and how to lift it, which will remind customers that they can also protect their local long distance and long distance carrier preferences. I have attached a courtesy copy of the insert. (See Attachment II.)

Your letter questions whether or not a local service freeze would be utilized as a customer retention tool. Be assured that any concern that Cox has relative to this issue can be alleviated by establishing a three way call with your prospective customer and Qwest to have the freeze removed from the Qwest account. See Second Report and Order, CC Docket 94-129, 14 FCC Rcd 1508, December 23, 1998, paragraph 132.

I would also like to address your comment concerning Staff's proposed Slamming/Cramming rules in Arizona. You stated that Staff had recognized the fact that there was currently no need for a local service freeze in Arizona because it had removed language concerning local freezes from its proposed rules. Qwest is unaware of any statements made by Staff regarding its reasons for removing this language. There were a variety of comments made during the workshops by Qwest, small rural ILECs, CLECs, and the long distance carriers. Any of these comments could have provided Staff with sufficient grounds for removing the local service freeze language from the proposed rules. The simple fact that the language was not included in Staff's final draft does not, in and of itself, equate to the adoption by Staff of any certain position relative to this issue.

Finally, Qwest assumes that Cox and other CLECs have the option of offering its customers a local service freeze also.

Michael W. Patten
January 7, 2002
Page 4

In summary, I believe that the information offered above demonstrates that Qwest believes this change to be pro-consumer, that we have clarified the operational procedures with respect to Cox and all other CLECs and their interaction with Qwest. If you should have any additional questions or concerns, please feel free to contact me.

Sincerely,



Teresa A. Wahler
Vice President-Arizona
Regional Vice President
Qwest Communications

Attachments

cc: Ernest Johnson - Director, Utilities Division (via hand delivered)
Douglas Garrett, Cox Arizona Telecom, L.L.C. (via facsimile 510-923-6225)
Bradley Carroll, Cox Arizona Telecom, L.L. C. (via facsimile 623-322-8037)
Maureen Arnold, Qwest (via hand delivery)
Christie Doherty, Qwest (via facsimile 303-965-3733)
Timothy Fyke, Qwest (via facsimile 602- 912-9447)
Tim Berg, Fennemore Craig (via hand delivery)

X-Accept-Language: en

MIME-Version: 1.0

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 <nlubame@uswest.com>, Catherine Augustson <caugust@uswest.com>, Jean
 Liston <jliston@uswest.com>
 Subject: [Fwd: [Fwd: Local Service Freeze - Methods for Co-providers]]
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Return-Path: <mrouth@uswest.com>

Received: from egate-co4.uswc.uswest.com ([151.116.25.51]) by
netmail9.uswc.uswest.com (Netscape Messaging Server 3.61) with ESMTTP
id AAA4754; Fri, 2 Mar 2001 13:22:20 -0700

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egate-co4.uswc.uswest.com (8.10.0/8.10.0) with ESMTTP id f22KLu229866; Fri, 2
Mar 2001 13:21:56 -0700 (MST)

Message-ID: <3AA000E4.DD64CCFA@uswest.com>

Date: Fri, 02 Mar 2001 13:21:56 -0700

From: Mark Routh <mrouth@uswest.com>

Organization: DTIS

X-Mailer: Mozilla 4.51 [en] (WinNT; U)

X-Accept-Language: en

MIME-Version: 1.0

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Subject: [Fwd: Local Service Freeze - Methods for Co-providers]
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Return-Path: <smcna@uswest.com>

Received: from egate-co2.uswc.uswest.com ([151.119.214.10]) by
netmail4.uswc.uswest.com (Netscape Messaging Server 3.61) with ESMT
id AAA5E21 for <mrouth@netmail4.uswc.uswest.com>; Fri, 2 Mar 2001
12:57:36 -0700

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egate-co2.uswc.uswest.com (8.10.0/8.10.0) with SMTP id f22JvYV24347; Fri, 2
Mar 2001 12:57:34 -0700 (MST)

Received: by notes.uswc.uswest.com (Lotus SMTP MTA v4.6.5 (863.2 5-20-1999))
id 88256A03.0073632F ; Fri, 2 Mar 2001 13:00:20 -0800

X-Lotus-FromDomain: USWEST

From: "Susan McNa" <smcna@uswest.com>

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cc: "Merna Thane" <mthane@notes.uswc.uswest.com>

Message-ID: <88256A03.007357E1.00@notes.uswc.uswest.com>

Date: Fri, 2 Mar 2001 12:58:27 -0700

Subject: Local Service Freeze - Methods for Co-providers

Mime-Version: 1.0

Content-type: text/plain; charset=us-ascii

Content-Disposition: inline

There is a change in the date for the mechanical process --- it will be
effective April 23, 2001 rather than approximately April 15, 2001. The date
has

been changed in the methods that follow.

----- Forwarded by Susan McNa/COMPLEX/USWEST/US on 03/02/2001
12:53 PM -----

Susan McNa
03/02/2001 07:55 AM

To: thubis@uswest.com, jxalle5@qwest.com, mrouth@uswest.com, Matthew Rossi/GROUPWARE/USWEST/US@USWEST, Martha Pheils/GROUPWARE/USWEST/US@USWEST, Coleen Austin/GROUPWARE/USWEST/US@USWEST, Paulette Hauck/GROUPWARE/USWEST/US@USWEST, Mary Riffle/GROUPWARE/USWEST/US@USWEST
cc: Merna Thane/COMPLEX/USWEST/US@USWEST

Subject: Local Service Freeze - Methods for Co-providers

The following methods bulletin should be distributed to co-providers and account teams.

----- Forwarded by Susan McNa/COMPLEX/USWEST/US on 03/02/2001 07:48 AM -----

Merna Thane
02/28/2001 03:27 PM

To: Susan McNa/COMPLEX/USWEST/US@USWEST
cc:

Subject: Local Service Freeze - Methods for Co-providers

LOCAL SERVICE FREEZE METHODS FOR CO-PROVIDERS

BACKGROUND

Out of concern for slamming issues, the Washington Transportation and Utilities Commission has mandated that a local service freeze process be implemented in Washington state effective March 10, 2001. This service is being made available beginning March 1, 2001 through Qwest Interconnect Services, on the basis of an end-user request to their co-provider. The process will be manual until approximately April 23, 2001, when it will become mechanized through IMA.

ESTABLISHING A FREEZE UPON END-USER REQUEST (LOA IN PLACE)

1. Fax an LSR requesting a freeze on designated lines to Wholesale Interconnect Services.

The request is required to be in the Remarks section of the LSR.

2. Qwest Wholesale will issue an order on the account to add LEFV (Local Exchange Freeze - Voice) behind each line requested. A permanent Remark: LEFV will also be placed on the account.

The end-user need not request all lines to be frozen. The LEFV entry will appear only behind those lines that are included in the request.

REJECTION OF A FREEZE REQUEST

If a request is made on an account and the lines in question are already frozen to another co-provider, the LSR will be rejected back to the requesting co-provider.

The requesting co-provider must instruct the end-user to call their old Local Service Provider (LSP) and have the freeze removed, afterwhich a request to freeze can be received and processed. Allow sufficient time for the freeze to be removed before resubmitting a request.

REMOVING A FREEZE UPON END-USER REQUEST

1. Fax an LSR to Wholesale Interconnect Services requesting unfreezing of designated lines.

The request is required to be in the Remarks section of the LSR.

2. Qwest Wholesale will issue an order on the account to remove LEFV behind lines requested to be unfrozen. The permanent Remark: LEFV will also be removed.

MECHANIZED CHANGES IN APRIL

Beginning approximately April 23, 2001, an entry of A (add) or B (remove) made on the LSR in the LSCP field will flow through IMA and add or remove a local service freeze, eliminating the need to fax requests to the Wholesale Interconnect Services group. More details on that will follow later.



- mrossi.vcf

PROTECT YOUR LOCAL (DIAL TONE) PHONE SERVICE



Communications is an important part of your everyday activities. That's why it's important for your service to be protected from slamming (switching of your phone service provider without your permission).

Get protection today from Qwest

Now you can protect your local (dial tone) service and prevent any company from changing your local service provider by placing a freeze on your telecommunications account - at no charge. You also have an option to freeze your local long distance and long distance service providers - at no charge.

(continued on back)

FREE!

It's quick and easy to get this FREE protection for your telephone service(s). Contact Qwest at:

Residential	1-800-339-0188
Business	1-800-996-2512
Large Business	1-800-549-5629
Federal Services	1-800-879-1023
Government & Education	1-866-221-6073

A freeze does not prohibit you from making changes to your services/provider(s) at any time, but you must contact us directly. You may remove a freeze at no charge by contacting Qwest directly with a verbal, written or electronically signed authorization.

If you have any questions or need additional information about this free protection, please

contact us at the toll free number listed at the top of your Qwest telephone bill.

Once a freeze is effective, authorization to others, even in writing or verified by a third party, will not be enough to change the provider of that service. Local Service Freeze is not available in all states.

Qwest. 

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 94-129
Policies and Rules Concerning)	
Unauthorized Changes of Consumers)	
Long Distance Carriers)	

**SECOND REPORT AND ORDER AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: December 17, 1998

Released: December 23, 1998

Comment Date: 30 days from publication in the Federal Register

Reply Comments Date: 45 days from publication in the Federal Register

By the Commission: Commissioners Ness and Tristani issuing statements;
Commissioner Powell concurring in part, dissenting in part and issuing a statement and
Commissioner Furchtgott-Roth dissenting and issuing a statement

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I. INTRODUCTION

1. In this Second Report and Order and Second Further Notice of Proposed Rulemaking (*Order*), we adopt rules proposed in the First Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration (*Further Notice and Order*)² to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."⁴ The goal of section 258 and this *Order* is to eliminate the practice of "slamming." A subscriber may authorize a change of his or her long distance carrier, or other telecommunications carrier, by requesting the change directly from his or her local exchange carrier (LEC), or by authorizing the new carrier to request a change on his or her behalf. Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization. Slamming nullifies the ability of consumers to select the telecommunications providers of their choice. Slamming also distorts the telecommunications market because it rewards those

² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10,674 (1997) (*Further Notice and Order*).

³ 47 U.S.C. § 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The principal goal of the Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." See Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement).

⁴ 47 U.S.C. § 258(a).

companies who engage in deceptive and fraudulent practices by unfairly increasing their customer base at the expense of those companies that market in a fair and informative manner and do not use fraudulent practices.

2. The numerous complaints we continue to receive and the input of the state commissions and the state attorneys general provide ample evidence that slamming is an extremely pervasive problem.⁵ Indeed, slamming is so rampant that it garnered significant attention in Congress in 1998 during the post-legislative session, although ultimately no legislation was passed.⁶ Despite the Commission's existing slamming rules, our records indicate that slamming has increased at an alarming rate. In 1997, the Commission processed approximately 20,500 slamming complaints and inquiries, which is an increase of approximately 61% over 1996 and an increase of approximately 135% over 1995.⁷ From January to the beginning of December 1998, the Commission processed 19,769 slamming complaints.⁸ Furthermore, the number of slamming complaints filed with the Commission is a mere fraction of the actual number of slamming incidents that occur.⁹

3. The Commission recently has increased its enforcement actions to impose severe financial penalties on slamming carriers. Since April 1994, the Commission has imposed final forfeitures totaling \$5,961,500 against five companies, entered into consent decrees with eleven companies with combined payments of \$2,460,000, and has proposed \$8,120,000 in penalties against six carriers.¹⁰ Additionally, the Commission may

⁵ See, e.g., National Association of Attorneys General (NAAG) Comments at Appendix (containing sampling of consumer complaints); Florida Commission Comments at 1 (stating that it received 2,393 slamming complaints in 1996 and that slamming is the number one telecommunications complaint received by the Florida Commission); NCL Comments at 3 (stating that in 1997, slamming ranked as the sixth most frequent subject of complaint to the National Fraud Information Center, a hotline for reporting fraud). A list of the commenters and their identifying abbreviations is in Appendix C.

⁶ William E. Kennard, Chairman of the FCC, received letters from Congress urging the Commission to implement anti-slamming rules and acknowledging that Congress did not pass slamming legislation. See Letter from Senator John McCain to William E. Kennard, Chairman, FCC (Oct. 30, 1998); Letter from Congressman Tom Bliley, *et al.* to William E. Kennard, Chairman, FCC (Dec. 11, 1998).

⁷ Consumer Complaints and Inquiries, Consumer Protection Branch, Enforcement Division, Common Carrier Bureau, Federal Communications Commission (Oct. 31, 1998).

⁸ *Id.*

⁹ For example, AT&T estimates that 500,000 of its customers were slammed in 1997. Mike Mills, *AT&T Unveils Plan to Cut "Slamming,"* Wash. Post, Mar. 4, 1998, at C1.

¹⁰ Slamming Enforcement Actions, Enforcement Division, Common Carrier Bureau, Federal

sanction a carrier by revoking its operating authority under section 214 of the Act.¹¹ The Commission recently has resorted to such sanctions against carriers for repeated slamming and other egregious violations of the Act and our rules.¹²

4. The new rules we adopt in this *Order* are not merely intended to conform our existing rules with the provisions of section 258, but also operate to establish a new comprehensive framework to combat aggressively and deter slamming in the future.¹³ With our new rules, we seek to close loopholes used by carriers to slam consumers and to bolster certain aspects of the rules to increase their deterrent effect. At the heart of the new slamming rules is our determination to take the profit out of slamming. Our new rules absolve subscribers of liability for some slamming charges in order to ensure that carriers do not profit from slamming activities, as well as to compensate subscribers for the confusion and inconvenience they experience as a result of being slammed. As an additional deterrent, we strengthen our verification procedures and broaden the scope of our slamming rules.

5. Our new rules strengthen the rights of consumers in three areas: (1) the relief given to slamming victims; (2) the method by which a carrier must obtain customer verification of preferred carrier change requests; and (3) the method by which a consumer can "freeze" his or her existing carrier, thus prohibiting another carrier from claiming that it has been authorized to request a carrier change on behalf of the consumer. More specifically, with respect to compensation, under our new rules a subscriber will be absolved of liability for all calls made within 30 days after being slammed.¹⁴ If however,

Communications Commission (Dec. 17, 1998).

¹¹ See 47 U.S.C. § 214; see also *CCN, Inc. et al.*, Order, 12 Comm. Reg. (P & F) 104 (1998) (revoking the operating authority of the Fletcher Companies because they slammed long distance telephone subscribers and committed other violations of the Communications Act of 1934, as amended) (*Fletcher Order*).

¹² *Fletcher Order*, 12 Comm. Reg. (P & F) at 104.

¹³ In light of this new framework, and the addition of new rules, we have redesignated and renumbered the existing verification rules such that the current section 64.1100 is redesignated as 64.1150, and the current section 64.1150 is redesignated as 64.1160. See Appendix A. See also 47 C.F.R. §1.412(c) (stating that rule changes may be adopted without prior notice if the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest).

¹⁴ See *infra* discussion on Liability of the Slammed Subscriber. This modifies our current rule under which a slammed consumer is liable for the amount he or she would have paid the authorized carrier for absent the unauthorized change. See *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9579 (1995) (1995 Report and Order).

the subscriber fails to notice that he or she has been slammed and pays the unauthorized carrier for such calls, section 258(b) of the Act requires the unauthorized carrier to remit such payments to the authorized carrier.¹⁵ Upon receipt of this amount, the authorized carrier shall provide the subscriber with a refund or credit of any amounts the subscriber paid in excess of the authorized carrier's rates.¹⁶ The unauthorized carrier must also pay the authorized carrier for any expenses incurred by the authorized carrier in restoring the subscriber's service or in collecting charges from the unauthorized carrier.¹⁷ These liability rules will not take effect for 90 days, however to enable interested carriers to develop and implement an alternative independent entity to administer compliance with these rules on their behalf.¹⁸ If carriers successfully implement such a plan, we will entertain carriers' requests for waiver of the administrative requirements of our liability rules.¹⁹

6. This *Order* also modifies the methods by which a carrier can fulfill its obligation to obtain consumer verification of carrier change requests. In particular, we eliminate the "welcome package"²⁰ as a verification option because we find that it has been subject to abuse by carriers engaged in slamming.²¹ Also in connection with verification, we (1) extend our verification rules to apply to carrier change²² requests

¹⁵ See *infra* discussion on Investigation and Reimbursement Procedures.

¹⁶ See *infra* discussion on Subscriber Refunds or Credits.

¹⁷ See *infra* discussion on Investigation and Reimbursement Procedures.

¹⁸ See *infra* discussion on Third Party Administrator for Dispute Resolution.

¹⁹ The following rule provisions in Appendix A impose administrative requirements on the authorized carrier: section 64.1100(c), (d); section 64.1170; section 64.1180. Upon being granted an above-mentioned waiver, the authorized carrier would be permitted to discharge its obligations under these rules by having the neutral third party perform the administrative functions in these rules. See *infra* discussion on Third Party Administrator for Dispute Resolution.

²⁰ The welcome package is an information package mailed to a consumer after the consumer has agreed to change carriers. It includes a prepaid postcard, which the customer can use to deny, cancel, or confirm the change order.

²¹ See *infra* discussion on The Welcome Package.

²² In the *Further Notice and Order*, we stated that we would use the term "preferred carrier" or "PC" to describe the subscriber's properly authorized or primary carrier(s) (a subscriber may have multiple preferred carriers - one for local exchange service and one for long distance service), as contemplated by the Act. We will use the term "carrier change," however, instead of "PC change," to further distinguish a change in telecommunications carrier from the former term "PIC change," which referred only to a change in a subscriber's primary interexchange carrier.

made during consumer-initiated (in-bound) calls to carriers,²³ rather than being applicable solely to outbound calls made by carriers to consumers; (2) extend our verification rules to apply, with a limited exception, to all telecommunications carriers in connection with changes of all telecommunications service, including local exchange service;²⁴ and (3) clarify that all carrier changes must be verified in accordance with one of the options provided in our rules, regardless of the manner of solicitation.²⁵ Finally, we set forth rules governing the preferred carrier freeze process, including verification requirements for imposing a freeze and mandating certain methods for lifting a freeze.²⁶

7. This *Order* also contains a Further Notice of Proposed Rulemaking, in which we propose several additional changes to further strengthen our slamming rules and otherwise prevent slamming. In particular, we seek comment on: (1) requiring unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers; (2) requiring resellers to obtain their own carrier identification codes (CICs) to prevent confusion between resellers and their underlying facilities-based carriers; (3) modifying the independent third party verification method²⁷

Furthermore, for consistency, we amend the text of the rules to use the term "preferred" in place of the term "primary." See Appendix A, §§ 64.1100, 64.1150. Cf. 47 C.F.R. § 1.412(c) (stating that rule changes may be adopted without prior notice if the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest). We note that, where appropriate, we will continue to use the term "PIC" in the text of this *Order* to describe a subscriber's primary interexchange carrier prior to the 1996 Act.

²³ See *infra* discussion on Application of the Verification Rules to In-Bound Calls. In 1995, we concluded that the Commission's verification rules should apply to in-bound calls. See 1995 *Report and Order*, 10 FCC Rcd 9560 (1995). The Commission, on its own motion, stayed its 1995 *Report and Order* insofar as it extends the primary interexchange carrier change (PIC-change) verification requirements set forth in section 64.1100 of the Commission's rules to consumer-initiated calls. *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Order, 11 FCC Rcd 856 (1995) (*In-bound Stay Order*).

²⁴ See *infra* discussion on Application of the Verification Rules to the Local Market and discussion on Application of the Verification Rules to All Telecommunications Carriers. At this time, however, we exclude commercial mobile radio services (CMRS) carriers from compliance with our verification requirements. See *infra* discussion on Application of the Verification Rules to All Telecommunications Carriers.

²⁵ See Appendix A, §§ 64.1150, 64.1160.

²⁶ A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. See *infra* discussion on Preferred Carrier Freezes.

²⁷ See 47 C.F.R. § 64.1100(c).

to ensure that it will be effective in preventing slamming; (4) clarifying the verification requirements for carrier changes made using the Internet; (5) defining the term "subscriber" to determine which person or persons should be authorized to make changes in the selection of a carrier for a particular account; (6) requiring carriers to submit to the Commission reports on the number of slamming complaints received by such carriers to alert the Commission as soon as possible about carriers that practice slamming; (7) imposing a registration requirement to ensure that only qualified entities enter the telecommunications market; (8) implementing a third party administrator for execution of preferred carrier changes and preferred carrier freezes.

8. We emphasize that the way to attack the slamming problem is to combat it on several fronts: improving the verification rules, imposing forfeitures and creating other financial disincentives for unscrupulous carriers, and increasing consumer awareness. In addition to prescribing rules to eliminate slamming, the Commission will continue to mete out swift, meaningful punishment for carriers that slam subscribers. Furthermore, the Commission will continue to work with the states to alert consumers about slamming and other telecommunications trends that may affect them, so that consumers can protect themselves from these practices.²⁸

²⁸

The Commission started its consumer outreach program in 1995, with the publication of the Common Carrier Scorecard. Furthermore, the Commission's Call Center staff, at 1-888-CALL-FCC, is trained to answer consumer inquiries on slamming.

F. Use of Preferred Carrier Freezes

1. Background

112. In the Further Notice and Order, the Commission sought comment on whether it should adopt rules to address preferred carrier freeze practices.³⁴⁸ The Commission noted that, although neither the Act nor its rules and orders specifically address preferred carrier freeze practices,³⁴⁹ concerns about carrier freeze solicitations have been raised with the Commission.³⁵⁰ The Commission noted, moreover, that MCI filed a Petition for Rulemaking on March 18, 1997, requesting that the Commission institute a rulemaking to regulate the solicitation, by any carrier or its agent, of carrier freezes or other carrier restrictions on a consumer's ability to switch his or her choice of interexchange (interLATA or intraLATA toll) and local exchange carrier.³⁵¹ The Commission determined that it was appropriate to consider MCI's petition in the Further Notice and Order and, therefore, incorporated MCI's petition and all responsive pleadings into the record of this proceeding.³⁵²

2. Overview and Jurisdiction

113. We adopt rules to clarify the appropriate use of preferred carrier freezes

³⁴⁸ *Further Notice and Order*, 12 FCC Rcd at 10,687-89. A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent.

³⁴⁹ We noted also that the Common Carrier Bureau Enforcement Division has previously reviewed certain preferred carrier freeze practices and found them to be consistent with the Act and the Commission's rules and orders. *See, e.g.*, Staff Interpretive Ruling Regarding Preemptive Effect of Commission's Regulations Governing Changes of Consumers' Primary Interexchange Carriers and the Communications Act of 1934, As Amended, On Particular Enforcement Action Initiated by the California Public Utilities Commission, DA 96-1077, 11 FCC Rcd 20453 (July 3, 1996); *see also* Letter, Elliot Burg, Esq., Asst. Attorney General, State of Vermont, 11 FCC Rcd 1899 (1995).

³⁵⁰ *See, e.g.*, Letter from Donald F. Evans, MCI Telecommunications Corporation to John Muleta, FCC (July 31, 1996).

³⁵¹ MCI Petition for Rulemaking, RM-9085 (filed Mar. 18, 1997) (MCI Petition). AT&T has indicated that it "strongly supports" MCI's petition to establish regulations governing preferred carrier freezes. Letter from Mark C. Rosenblum, AT&T Corp. to Regina M. Keeney, FCC (Apr. 9, 1997). The Commission established a pleading cycle for comments regarding the MCI petition. *See* Public Notice, DA 97-942 (rel. May 5, 1997). Comments in response to that Public Notice are referred to as "Petition Comments" and "Petition Replies."

³⁵² *Further Notice and Order*, 12 FCC Rcd at 10,687-88.

because we believe that, although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets. Thus, in adopting rules to govern the use of preferred carrier freeze mechanisms, we appropriately balance several factors, including consumer protection, the need to foster competition in all markets, and our desire to afford carriers flexibility in offering their customers innovative services such as preferred carrier freeze programs.³⁵³ Moreover, in so doing we facilitate customer choice of preferred carrier selections and adopt and promote procedures that prevent fraud.

114. While we are confident that our carrier change verification rules, as modified in this Order, will provide considerable protection for consumers against unauthorized carrier changes, we recognize that many consumers wish to utilize preferred carrier freezes as an additional level of protection against slamming.³⁵⁴ As noted in the Further Notice and Order, a carrier freeze prevents a change in a subscriber's preferred carrier selection until the subscriber gives the carrier from whom the freeze was requested his or her written or oral consent.³⁵⁵ The record demonstrates that LECs increasingly have made available preferred carrier freezes to their customers as a means of preventing unauthorized conversion of carrier selections.³⁵⁶ The Commission, in the past, has supported the use of preferred carrier freezes as a means of ensuring that a subscriber's preferred carrier selection is not changed without his or her consent.³⁵⁷ Indeed, the majority of commenters in this proceeding assert that the use of preferred carrier freezes can reduce slamming by giving customers greater control over their

³⁵³ See, e.g., Ohio Commission Comments at 12.

³⁵⁴ See, e.g., NYSDPS Comments at 8-9; Ameritech Petition Comments at 8 (noting that number of Ameritech Illinois customers utilizing freezes increased from 35,000 to 200,000 between 1993 and 1995); SNET Reply Comments at 4.

³⁵⁵ See *Further Notice and Order*, 12 FCC Rcd at 10,688.

³⁵⁶ See, e.g., Bell Atlantic Comments at 4 ("Bell Atlantic began offering PC freezes in response to its subscriber's demands for protection from slamming."); SNET Comments at 6-7. It appears, based on the record, that particular PC freeze administration practices can vary widely between carriers (e.g., some carriers require written consent to lift a freeze while others require oral consent to lift a freeze). See, e.g., GTE Comments at 13 (stating that GTE requires customers to complete and return special form before freeze is lifted); Ameritech Comments at 21 (stating that Ameritech offers 24 hour telephone line for customers to lift freeze).

³⁵⁷ See, e.g., Federal Communications Commission, *Common Carrier Scorecard* (Fall 1996); *Policy and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Report and Order, 10 FCC Rcd 9560, 9574, n.58 (1995) (1995 *Report and Order*).

accounts.³⁵⁸ Our experience, thus far, has demonstrated that preventing unauthorized carrier changes enhances competition by fostering consumer confidence that they control their choice of service providers. Thus, we believe that it is reasonable for carriers to offer, at their discretion, preferred carrier freeze mechanisms that will enable subscribers to gain greater control over their carrier selection.

115. In the Further Notice and Order, however, we stated that preferred carrier freezes may have the effect of limiting competition among carriers.³⁵⁹ We share commenters' concerns that in some instances preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner.³⁶⁰ Indeed, we note that a number of state commissions have determined,³⁶¹ and certain LECs concede,³⁶² that unregulated preferred carrier freezes are susceptible to such abuses. By definition, preferred carrier freezes create an additional step (namely, that subscribers contact directly the LEC that administers the preferred carrier freeze program) that customers must take before they are able to obtain a change in their carrier selection.³⁶³ Where customers fail to take the additional step of lifting a preferred carrier freeze, their otherwise valid attempts to effectuate a change in carrier selection will be frustrated. Observing this process, some commenters argue that certain preferred carrier freeze programs are so onerous as to create an unreasonable hurdle for subscribers and submitting carriers seeking to process a carrier change.³⁶⁴ Other commenters,

³⁵⁸ See, e.g., NAAG Comments at 11; NCL Comments at 9; Texas Commission Comments at 4; Ameritech Comments at 21; GTE Reply Comments at 14; AT&T Comments at 18.

³⁵⁹ See *Further Notice and Order*, 12 FCC Rcd at 10,688.

³⁶⁰ See, e.g., MCI Petition at 2-8; CompTel Comments at 8 ("In fact, the incumbent LEC's strategic use of PC-freezes belies any claim that they are using PC-freezes to protect consumers from slamming."); PaOCA at 7; RCN Reply Comments at 7-8.

³⁶¹ See, e.g., Michigan Public Service Commission, *Sprint Communications Company, L.P. v. Ameritech Michigan*, Case No. U-11038 (Aug. 1, 1996); Public Utilities Commission of Ohio, *Complaint of Sprint Communications Company, L.P. v. Ameritech Ohio*, Case No. 96-142-TP-CSS (Feb. 20, 1997); New Jersey Board of Public Utilities, *Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis*, Docket No. TX94090388 (June 3, 1997). Cf. California Public Utilities Commission, *Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision 97-04-083 (Apr. 23, 1997). See also North Carolina Commission Comments at 4; NAAG Comments at 11.

³⁶² See, e.g., Ameritech Reply Comments at 9; USTA Comments at 7 ("USTA agrees that PC freezes do have the ability to hinder competition if the Commission's rules permit improper use of them.").

³⁶³ See *Further Notice and Order*, 12 FCC Rcd at 10,688.

primarily interexchange carriers, suggest that LECs are using deceptive preferred carrier freeze solicitation practices to "lock up" consumers, without their understanding, as part of an effort to stifle competition in their markets.³⁶⁵

116. Particularly given the market structure changes contemplated in the 1996 Act,³⁶⁶ we are persuaded that incentives for unreasonable preferred carrier freeze practices exist. With the removal of legal and regulatory barriers to entry, carriers are now or soon will be able to enter each other's markets and provide various services in competition with one another.³⁶⁷ Incumbent LECs have, or will have in the foreseeable future, authorization to compete in the market for interLATA services. Similarly, incumbent LECs are preparing to face or are facing competition in the local exchange and intraLATA toll markets. Given these changes in market structure, incumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier.³⁶⁸ Despite these market changes, it appears that, at this time, facilities-based LECs -- most of which are incumbent LECs -- are uniquely situated to administer preferred carrier freeze programs. Thus, other carriers are dependent on the LECs to offer preferred carrier freeze services to their customers.

117. We conclude, contrary to the assertions of Bell Atlantic, that we have authority under section 258 to address concerns about anticompetitive preferred carrier freeze practices for intrastate, as well as interstate, services.³⁶⁹ Congress, in section 258 of the Act, has granted this Commission authority to adopt verification rules applicable to both submission and execution of changes in a subscriber's selection of a provider of

³⁶⁴ See, e.g., Worldcom Petition Comments at 5; MCI Comments at 11; LCI Reply Comments at 8; see also NAAG Comments at 11.

³⁶⁵ See, e.g., Sprint Petition Comments at 7 (citing examples of Ameritech practices in Illinois and Michigan); TRA Comments at 23; see also Ohio Commission Comments at 10-12.

³⁶⁶ See Joint Explanatory Statement (stating that the principal goal of the 1996 Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

³⁶⁷ See, e.g., 47 U.S.C. §§ 251-252, 271.

³⁶⁸ See, e.g., MCI Comments at 18; Worldcom Comments at 9-10; Sprint Petition Comments at 5 ("In the past, most LECs did not actively promote PIC freezes . . ."); TRA Comments at 18; cf. TOPC Reply Comments at 5.

³⁶⁹ Bell Atlantic and NYNEX Petition Comments at 1, n.1 ("The Commission has no jurisdiction to regulate PIC freezes or other LEC practices regarding intrastate services . . .").

local exchange or telephone toll services.³⁷⁰ Preferred carrier freezes directly impact the verification procedures which Congress instructed the Commission to adopt because they require subscribers to take additional steps beyond those described in the Commission's verification rules to effectuate a carrier change. Moreover, where a preferred carrier freeze is in place, a submitting carrier that complies with our verification rules may find that its otherwise valid carrier change order is rejected by the LEC administering the freeze program. Since preferred carrier freeze mechanisms can essentially frustrate the Commission's statutorily authorized procedures for effectuating carrier changes, we conclude that the Commission has authority to set standards for the use of preferred carrier freeze mechanisms.

118. Based on this authority, we prescribe rules to ensure the fair and efficient use of preferred carrier freezes for intrastate and interstate services to protect customer choice and, correspondingly, to promote competition. Specifically, in the following sections, we adopt rules that apply, on a going-forward basis, to all carriers and that provide for the nondiscriminatory solicitation, implementation, and lifting of preferred carrier freezes.

3. Nondiscrimination and Application of Rules to All Local Exchange Carriers

119. We conclude, and codify in our rules implementing section 258 of the Act, that preferred carrier freezes should be implemented on a nondiscriminatory basis so that LECs do not use freezes as a tool to gain an unreasonable competitive advantage. Given that LECs are uniquely positioned to offer preferred carrier freezes, as described above, we believe that a nondiscrimination requirement is necessary to prevent unreasonable practices, such as denying freezes to the customers of their competitors. Accordingly, local exchange carriers must make available any preferred carrier freeze mechanism to all subscribers, under the same terms and conditions, regardless of the subscribers' carrier selection.³⁷¹ We note that a number of LECs, including Ameritech and GTE, indicate that they already offer preferred carrier freezes to customers on a nondiscriminatory basis.³⁷² Similarly, we state our expectation that LECs should not be able to impose discriminatory delays when lifting freezes.³⁷³ Since the Commission has long

³⁷⁰ 47 U.S.C. § 258. *See supra* discussion on Application of the Verification Rules to the Local Market. *See also* Sprint Petition Reply Comments at 4.

³⁷¹ *See*, Appendix A, § 64.1190(b). *See also*, e.g., MCI Petition at 9; TRA Petition Comments at 8; CompTel Petition Comments at 2; CompTel Comments at 9; TOPC Reply Comments at 5; Citizens Petition Comments at 5.

³⁷² *See*, e.g., Ameritech Reply Comments at 11; GTE Comments at 12 ("GTE treats all carriers, including affiliates, the same for PC-change freeze purposes.").

³⁷³ We concluded above that the nondiscrimination requirements of sections 202(a) and 251 prohibit

recognized that incumbent LECs may have the incentive to discriminate in the provision of service to their competitors,³⁷⁴ we believe that articulating this nondiscrimination requirement will ensure that the same level of protection is available to all subscribers.

120. At the same time, we conclude that our rules for preferred carrier freezes should apply to all local exchange carriers. We reject those proposals to place additional requirements on incumbent LECs, to the exclusion of competitive LECs.³⁷⁵ Where a competitive LEC offers a preferred carrier freeze program, that competitive LEC must comply with our preferred carrier freeze rules, as set out in this Order. This policy is appropriate because we expect that a competitive LEC may face the same incentives to discriminate in the provision of preferred carrier freeze service to the customers of its competitors. In addition, subscribers of competitive LECs have the same right to expect that preferred carrier freeze programs will be nondiscriminatory and not deceptive or misleading, as do subscribers of incumbent LECs.

4. Solicitation and Implementation of Preferred Carrier Freezes

121. We adopt minimum standards to govern the solicitation and implementation of preferred carrier freezes in order to deter anticompetitive application of freeze practices and to ensure that consumers are able to make more informed decisions on whether to utilize a freeze. We share concerns of some commenters that certain carriers may solicit preferred carrier freezes in a manner that is unreasonable under the Act.³⁷⁶ The record indicates the potential for customer confusion. It appears that many consumers are unclear about whether preferred carrier freezes are being placed on their carrier selections and about which services or carriers are subject to these freezes.³⁷⁷ We find that the most effective way to ensure that preferred carrier freezes are used to protect consumers, rather than as a barrier to competition, is to ensure that

executing carriers from imposing discriminatory delays on their competitors when executing preferred carrier changes. *See supra* discussion on Timeframe for Execution of Carrier Changes. We believe that sections 202(a) and 251 may also restrict incumbent LECs' ability to use preferred carrier freezes for anticompetitive conduct.

³⁷⁴ See, e.g., *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489, CC Docket No. 96-149 (rel. Dec. 24, 1996) ("*Non-Accounting Safeguards Order*").

³⁷⁵ See, e.g., AT&T Petition Comments at 6; CompTel Petition Comments at 6.

³⁷⁶ See, e.g., AT&T Petition Comments at 4-5; Sprint Petition Comments at 7; TRA Comments at 23.

³⁷⁷ See, e.g., MCI Petition at 4, n.3; NAAG Comments at 12.

subscribers fully understand the nature of the freeze, including how to remove a freeze if they chose to employ one. We thus conclude that, in order to be a just and reasonable practice, any solicitation and other carrier-provided information concerning a preferred carrier freeze program should be clear and not misleading.³⁷⁸ Moreover, we adopt the tentative conclusion, as set forth in the Further Notice and Order, that any solicitation for preferred carrier freezes should provide certain basic explanatory information to subscribers about the nature of the preferred carrier freeze.³⁷⁹ Our decision to adopt rules governing the solicitation of preferred carrier freezes is supported by the vast majority of commenters, including state commissions and a number of incumbent LECs.³⁸⁰

122. We specifically decide that, at a minimum, carriers soliciting preferred carrier freezes must provide: 1) an explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a preferred carrier freeze; 2) a description of the specific procedures necessary to lift a preferred carrier freeze and an explanation that these steps are in addition to the Commission's regular verification rules for changing subscribers' carrier selections and that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and 3) an explanation of any charges associated with the preferred carrier freeze service.³⁸¹ We decline, at this time, to mandate specific language to describe preferred carrier freezes because we believe that our rules will provide carriers with sufficient guidance to formulate scripts that inform customers about preferred carrier freezes in a neutral manner while preserving carrier flexibility in the message.³⁸²

123. We also conclude that preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services subject to a freeze, i.e., between local, intraLATA toll, interLATA toll, and international toll services.³⁸³ This rule will address concerns raised by commenters, including MCI and

³⁷⁸ See also 47 U.S.C. § 201(b).

³⁷⁹ See *Further Notice and Order*, 12 FCC Rcd at 10688.

³⁸⁰ See, e.g., NYSCPB Reply Comments at 9 ("Commission properly . . . proposed rules that would limit such promotional materials."); NAAG at 12; Ameritech Reply Comments at 10; CompTel Comments at 9.

³⁸¹ See Appendix A, § 64.1190(d)(1).

³⁸² See MCI Comments at 17 ("Commission should consider requiring the use of standard language . . ."); NYSCPB Reply Comments at 9; Excel Reply Comments at 4.

³⁸³ See Appendix A, § 64.1190(c).

NAAG, that consumers may experience confusion about the differences between telecommunications services when employing freezes.³⁸⁴ It will also serve to prevent unscrupulous carriers from placing freezes on all of a subscriber's services when the subscriber only intended to authorize a freeze for a particular service or services.³⁸⁵ We thus conclude that "account level" freezes are unacceptable and that, instead, carriers must explain clearly the difference in services and obtain separate authorization for each service for which a preferred carrier freeze is requested.³⁸⁶ We note that a broad range of commenters, including many incumbent LECs, agree that customers should have the ability to place individual freezes on their interLATA, intraLATA toll, and local services.³⁸⁷ While some members of the public may still be unclear about the distinctions between different telecommunications services, particularly the difference between intraLATA toll and interLATA toll services, we expect that carriers can help customers to develop a better understanding of these services.

124. We decline those suggestions that we prohibit LECs from taking affirmative steps to make consumers aware of preferred carrier freezes because we believe that preferred carrier freezes are a useful tool in preventing slamming. Nor do we draw distinctions between "solicitation" and "educational materials" that some commenters urge us to adopt.³⁸⁸ We instead believe that the standards adopted herein will provide sufficient guidance for consumers. At the same time, we decline the suggestions of those parties who would have us require LECs affirmatively to distribute literature describing their preferred carrier freeze programs.³⁸⁹ Should states wish to adopt such requirements, we believe that it is within their purview to do so.

125. We adopt our proposal to extend our carrier change verification procedures to preferred carrier freeze solicitations and note that this proposal was supported by a wide range of carriers, state commissions, and consumer

³⁸⁴ MCI Comments at 14, n.15; NAAG Comments at 12. *See also* U S WEST Reply Comments at 24, n.74; TRA Comments at 25-26.

³⁸⁵ *See, e.g.*, Ameritech Petition Comments at 14; AT&T Petition Reply Comments at 7.

³⁸⁶ *See* Appendix A, § 64.1190(c).

³⁸⁷ *See, e.g.*, USTA Comments at 7; AT&T Petition Reply at 7; Puerto Rico Telephone Company Petition Reply at 4; LCI Reply Comments at 9.

³⁸⁸ *See, e.g.*, CBT Comments at 8.

³⁸⁹ *See, e.g.*, TOPC Reply Comments at 5; OCC Reply Comments at 4; CBT Comments at 9. We note that some LECs do not affirmatively market their preferred carrier freeze programs. *See, e.g.*, SBC Comments at 8, 10.

organizations.³⁹⁰ By requiring LECs that administer preferred carrier freeze programs to verify a subscriber's request to place a freeze, we expect to reduce customer confusion about preferred carrier freezes and to prevent fraud in their implementation. According to a number of commenters, customer confusion over preferred carrier freezes often results in valid carrier change orders being rejected by LECs.³⁹¹ In combination with our requirement that carriers obtain separate authorization for each telecommunications service subject to the freeze, these verification procedures will further ensure that subscribers understand which services will be subject to a preferred carrier freeze.³⁹² Requiring LECs that offer preferred carrier freezes to comply with the Commission's verification rules will also minimize the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of subscribers.³⁹³ We find such a practice to be unreasonable because it frustrates consumers' choice in carriers by making it more difficult for the consumer to switch carriers.

126. Our verification rules are designed to confirm a subscriber's wishes while imposing the minimum necessary burden on carriers. We agree with BellSouth that applying the Commission's verification rules to preferred carrier freezes will enable subscribers to obtain preferred carrier freeze protection with a minimum of effort.³⁹⁴ By adopting the same verification procedures for both carrier changes and preferred carrier freezes, we expect that the process of implementing preferred carrier freezes will be less confusing for subscribers and administratively more efficient for carriers. We reject other commenter proposals, such as AT&T's proposal to require that LECs confirm preferred carrier freezes in writing.³⁹⁵ We think that our verification rules will be

³⁹⁰ See Appendix A, § 64.1190(d)(2). See *Further Notice and Order*, 12 FCC Rcd at 10,687-89. See, e.g., Worldcom Comments at 9; Intermedia Comments at 6; BellSouth Comments at 4; Texas Commission Comments at 4; PaOCA Comments at 7.

³⁹¹ See, e.g., Sprint Petition Comments at 8 (rejection of the preferred carrier change order "may occur weeks after such customers have chosen to switch . . ."); CompTel Petition Comments at 4; MCI Comments at 14-15.

³⁹² We note that, where a subscriber seeks to place a freeze on more than one of his or her services, the separate authorization and verification may be received and conducted during the same telephone conversation or may be obtained in separate statements on the same written request for a freeze.

³⁹³ See AT&T Comments at 18 ("extending the verification rules to the freeze mechanism may help to curb competitive abuse of that procedure . . ."); BellSouth Comments at 4 (rules will "provide some protection against unscrupulous carriers that attempt to limit competition by imposing PC freezes without the subscriber's authorization").

³⁹⁴ See BellSouth Comments at 4.

³⁹⁵ AT&T Comments at 19, n.23.

adequate to ensure that subscribers' choices, whether for carrier changes or preferred carrier freezes, are honored.

5. Procedures for Lifting Preferred Carrier Freezes

127. We conclude that LECs offering preferred carrier freeze programs must make available reasonable procedures for lifting preferred carrier freezes. Based on the record before us, we are concerned that some procedures for lifting preferred carrier freezes may place an unreasonable burden on subscribers who wish to change their carrier selections.³⁹⁶ In addition, and as noted above, we are concerned that consumers are not being fully informed about how freezes work, and therefore often fail to appreciate the significance of implementing a freeze at the time they make the choice. This concern is particularly acute in markets where competition has not yet fully developed so that consumers are aware of the choices they have or will have in the future. We conclude that adopting baseline standards for the lifting of preferred carrier freezes will appropriately balance the interests of Congress in opening markets to competition by protecting consumer choice, preventing anticompetitive practices, and providing consumers a potentially valuable tool to protect themselves from fraud. Thus, carriers must offer subscribers a simple, easily understandable, but secure, way of lifting preferred carrier freezes in a timely manner.³⁹⁷

128. With these concerns for promoting customer choice in mind, we conclude that a LEC administering a preferred carrier freeze program must accept the subscriber's written and signed authorization stating an intent to lift a preferred carrier freeze.³⁹⁸ Such written authorization -- like the LOAs authorized for use in carrier changes and to place a preferred carrier freeze -- should state the subscriber's billing name and address and each telephone number to be affected. In addition, the written authorization should state the subscriber's intent to lift the preferred carrier freeze for the particular service in question. We think that this procedure is clearly consistent with the purpose of the preferred carrier freeze because it permits the subscriber to notify the LEC directly of her or his intention to lift a preferred carrier freeze.³⁹⁹ By requiring LECs to accept such authorization, we ensure that subscribers will have a simple and reliable way of lifting preferred carrier freezes, and thus making a carrier change.

³⁹⁶ See, e.g., MCI Comments at 15-17; CompTel Petition Comments at 2.

³⁹⁷ See, e.g., IXC Long Distance Reply Comments at 5; Ameritech Reply Comments at 10; MCI Petition at 9.

³⁹⁸ See Appendix A, § 64.1190(e)(1).

³⁹⁹ See, e.g., U S WEST Reply Comments at 25; USTA Reply Comments at 5; TNRA Comments at 3.

129. We similarly conclude that LECs offering preferred carrier freeze programs must accept oral authorization from the customer to remove a freeze and must permit submitting carriers to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze.⁴⁰⁰ In this regard, we agree, for example, with the Texas Office of Public Utility Counsel that three-way calling is an effective means of having a preferred carrier freeze lifted during an initial conversation between a subscriber and a submitting carrier.⁴⁰¹ Specifically, three-way calling allows a submitting carrier to conduct a three-way conference call with the LEC administering the freeze program while the consumer is still on the line, e.g., during the initial telemarketing session, so that the consumer can personally request that a particular freeze be lifted. We are not persuaded by certain LECs' claims that three-way calling is unduly burdensome or raises the risk of fraud.⁴⁰² We do not anticipate that the volume of subscribers seeking to lift their preferred carrier freezes will be overly burdensome for these carriers' customer support staff. Further, we expect that LECs administering preferred carrier freeze programs will be able to recover as part of the carrier change charge the cost of making such three-way calling available.⁴⁰³ We also believe that three-way calling will effectively prevent fraud because a three-way call establishes direct contact between the LEC and the subscriber. We expect that the LEC administering the preferred carrier freeze program will have the opportunity to ask reasonable questions designed to determine the identity of the subscriber during an oral authorization, such as a three-way call, to lift a freeze.⁴⁰⁴ Finally, the three-way call procedure merely lifts the preferred carrier freeze. In addition, a submitting carrier must follow the Commission's verification rules before submitting a carrier change. For example, an interexchange carrier wishing to submit a carrier change for a customer with a preferred carrier freeze would comply with our verification rules for carrier changes, perhaps by using third-party verification, and then, if necessary, could perform a three-way call with the LEC administering the preferred carrier freeze program to lift the freeze -- all before submitting its carrier change order to the executing carrier.

⁴⁰⁰ See Appendix A, § 64.1190(e)(2).

⁴⁰¹ TOPC Reply Comments at 5. See also AT&T Petition Comments at 7; Telco Comments at 8-9; Ohio Commission Comments at 11; Worldcom Comments at 10.

⁴⁰² See, e.g., GTE Petition Comments at 5; Citizens Petition Reply at 5; Ameritech Petition Comments at 21.

⁴⁰³ Moreover, we can revisit these conclusions if further experience indicates that these rules become unduly burdensome.

⁴⁰⁴ See AT&T Petition Reply at 5, n.8.

130. We decline to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encourage parties to develop new means of accurately confirming a subscriber's identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes. Other methods should be secure, yet impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze.⁴⁰⁵ Thus, we do not adopt IXC Long Distance's proposal to require that LECs give customers a unique password or personal identification number.⁴⁰⁶ While some LECs may find such a proposal useful, we need not mandate its use, given our decision to adopt the procedures for lifting preferred carrier freezes described above.

131. We agree with Ameritech and those commenters who suggest that the essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze.⁴⁰⁷ Because our carrier change rules allow carriers to submit carrier change requests directly to the LECs, the limitation on lifting preferred carrier freezes gives the freeze mechanism its protective effect. We disagree with MCI that third-party verification of a carrier change alone should be sufficient to lift a preferred carrier freeze.⁴⁰⁸ Were we to allow third-party verification of a carrier change to override a preferred carrier freeze, subscribers would gain no additional protection from the implementation of a preferred carrier freeze. Since we believe that subscribers should have the choice to implement additional slamming protection in the form of preferred carrier freeze mechanisms, we do not adopt MCI's proposal.

132. We expect that, in three-way calls placed to lift a preferred carrier freeze, carriers administering freeze programs will ask those questions necessary to ascertain the identity of the caller and the caller's intention to lift her or his freeze, such as the caller's social security number or date of birth. Several commenters state that when subscribers contact certain LECs to lift their preferred carrier freezes, those LECs go further and attempt to retain customers by dissuading them from choosing another carrier as their preferred carrier selection.⁴⁰⁹ Indeed, SNET states that there is no reason for incumbent

⁴⁰⁵ See, e.g., Ameritech Comments at 20-21 (discussing development of 24 hour voice response unit).

⁴⁰⁶ IXC Long Distance Comments at 5.

⁴⁰⁷ Ameritech Reply Comments at 14. See also NYSCPB Reply Comments at 10; U S WEST Reply Comments at 25.

⁴⁰⁸ MCI Petition at 9. See also Midcom Petition Comments at 3; BCI Comments at 3.

⁴⁰⁹ See, e.g., CompTel Petition Comments at 4; Sprint Comments at 34; MCI Reply Comments at 10 (indicating that LECs engage in "win back" efforts even while participating in three-way calls). But see Bell Atlantic Reply Comments at 11, n.21.

LECs to treat the lifting of preferred carrier freezes "as ministerial and not as an opportunity to market the services of its affiliates."⁴¹⁰ We disagree with SNET and believe that, depending on the circumstances, such practices likely would violate our rule, discussed above, that carriers must offer and administer preferred carrier freezes on a nondiscriminatory basis. Indeed, we are aware of states that have made similar findings that a carrier that is asked to lift a freeze should not be permitted to attempt to change the subscriber's decision to change carriers.⁴¹¹ In addition, such practices could also violate the "just and reasonable" provisions of section 201(b).⁴¹² Much as in the context of executing carriers and carrier change requests, we think it is imperative to prevent anticompetitive conduct on the part of executing carriers and carriers that administer preferred carrier freeze programs.⁴¹³ Carriers that administer freeze programs otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the carrier's position as a provider of switched access services. Therefore, LECs that receive requests to lift a preferred carrier freeze must act in a neutral and nondiscriminatory manner. To the extent that carriers use the opportunity with the customer to advantage themselves competitively, for example, through overt marketing, such conduct likely would be viewed as unreasonable under our rules.⁴¹⁴

6. Information about Subscribers with Preferred Carrier Freezes

133. We do not require LECs administering preferred carrier freeze programs to make subscriber freeze information available to other carriers because we expect that, particularly in light of our new preferred carrier freeze solicitation requirements, more subscribers should know whether or not there is a preferred carrier freeze in place on their carrier selection.⁴¹⁵ Given our requirement that LECs make available a three-way

⁴¹⁰ SNET Petition Reply Comments at 7.

⁴¹¹ See, e.g., Illinois Commerce Commission, *MCI Telecommunications Corp. et al. v. Illinois Bell Telephone Co.*, Order, Case Nos. 96-0075 and 96-0084 (rel. Apr. 3, 1996) ("[d]uring telephone calls for the purpose of changing the customer's intraMSA PIC to another carrier, Respondent should not attempt to retain the customer's account during the process"); Michigan Public Service Commission, *Sprint Communications Company, L.P. v. Ameritech Michigan*, Case No. U-11038 (Aug. 1, 1996) (concluding that "if a customer with [a preferred carrier freeze] calls to change providers, Ameritech Michigan shall not use that contact to try to persuade the customer not to change providers").

⁴¹² 47 U.S.C. § 201(b).

⁴¹³ See *supra* discussion on Marketing Use of Carrier Change Information.

⁴¹⁴ See 47 U.S.C. §§ 201, 208.

⁴¹⁵ See MCI Petition at 8-9; IXC Long Distance Reply Comments at 5. We note that at least one incumbent LEC makes this information available already. BellSouth Reply Comments at 7; cf.

calling mechanism to lift preferred carrier freezes, if a subscriber is uncertain about whether a preferred carrier freeze has been imposed, the submitting carrier may use the three-way calling mechanism to confirm the presence of a freeze. Thus, we expect that carriers will not typically need to rely on such information to determine whether a freeze is in place.⁴¹⁶ On the other hand, we see benefit to the consumer -- in terms of decreased confusion and inconvenience -- where carriers would be able to determine whether a freeze is in place before or during an initial contact with a consumer. As one alternative, we encourage LECs to consider whether preferred carrier freeze indicators might be a part of any operational support system that is made available to new providers of local telephone service.

7. When Subscribers Change LECs

134. Based on the record developed on this issue, we do not adopt the Commission's tentative conclusion that LECs would automatically establish existing preferred carrier freezes that were implemented with the prior LEC when a subscriber switches his or her provider of local service.⁴¹⁷ Rather, we conclude that when a subscriber switches LECs, he or she should request the new LEC to implement any desired preferred carrier freezes, even if the subscriber previously had placed a freeze with the original LEC. We are persuaded by the substantial number of LEC commenters asserting that it would be technically difficult or impossible to transfer information about existing preferred carrier freezes from the original LEC to the new LEC.⁴¹⁸ It is our understanding that these difficulties are accentuated because each LEC has different procedures for managing preferred carrier freeze mechanisms. Moreover, because our rules will allow carriers to have different means for lifting freezes, it will be important for subscribers to be informed of the new LECs' procedures before deciding whether to renew a freeze. In the absence of such a requirement, we expect that LECs will develop procedures to ensure that new subscribers are able to implement any desired preferred carrier freezes at the time of subscription, thus avoiding potential confusion for subscribers.

8. Preferred Carrier Freezes of Local and IntraLATA Services

Ameritech Reply Comments at 11-12.

⁴¹⁶ If we find that substantial impediments to the timely identification and lifting of preferred carrier freezes exists in the future, we can revisit this issue.

⁴¹⁷ *Further Notice and Order*, 12 FCC Rcd at 10,689. See also OCC Comments at 3; Worldcom Comments at 10.

⁴¹⁸ See, e.g., Ameritech Comments at 23; Bell Atlantic Comments at 5; MCI Comments at 17. See also Ohio Commission Comments at 12.

135. We decline the suggestion of a number of commenters that we prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange or intraLATA services until competition develops in a LEC's service area.⁴¹⁹ In so doing, however, we recognize, as several commenters observe, that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be or newly open to competition.⁴²⁰ These commenters in essence argue that incumbent LECs seek to use preferred carrier freeze programs as a means to inhibit the ability or willingness of customers to switch to the services of new entrants. We share concerns about the use of preferred carrier freeze mechanisms for anticompetitive purposes. We concur with those commenters that assert that, where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced.⁴²¹ Aggressive preferred carrier freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct.⁴²² We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.

136. Despite our concerns about the possible anticompetitive aspects of permitting preferred carrier freezes of local exchange and intraLATA toll services in markets where there is little competition for these services, we believe that it is not necessary for the Commission to adopt a nationwide moratorium. Indeed, we remain convinced of the value of preferred carrier freezes as an anti-slamming tool. We do not wish to limit consumer access to this consumer protection device because we believe that promoting consumer confidence is central to the purposes of section 258 of the Act. As with most of the other rules we adopt today, the uniform application of the preferred carrier freeze rules to all carriers and services should heighten consumers' understanding of their rights. We note the strong support of those consumer advocates that state that the Commission should not delay the implementation of preferred carrier freezes.⁴²³ We

⁴¹⁹ See, e.g., MCI Petition Reply at 3; Intermedia Comments at 7; LCI Comments at 1; Telco Comments at 7; Excel Reply Comments at 2-3.

⁴²⁰ See, e.g., NAAG Comments at 11; PaOCA Comments at 7; Sprint Comments at 34.

⁴²¹ See, e.g., MCI Comments at 13-14; Ohio Commission Comments at 11-12; cf. USTA Reply Comments at 7. Cf. BellSouth Comments at 12, n.25 (stating that it does not offer preferred carrier freezes for choice of local service providers whether the provider is BellSouth or a reseller CLEC).

⁴²² See, e.g., Ohio Commission Comments at 11-12; LCI Comments at 2-3; Intermedia Comments at 6; TRA Petition Comments at 2-4 (citing examples from MCI Petition).

⁴²³ See, e.g., OCC Reply Comments at 6 ("Customers would thus not be able to protect themselves

also expect that our rules governing the solicitation and implementation of preferred carrier freezes, as adopted herein, will reduce customer confusion and thereby reduce the likelihood that LECs will be able to shield their customers from competition.

137. We make clear, however, that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anticompetitive conduct. We note that a number of states have imposed some form of moratorium on the implementation of preferred carrier freezes in their nascent markets for local exchange and intraLATA toll services.⁴²⁴ We find that states -- based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdictions -- may conclude that the negative impact of such freezes on the development of competition in local and intraLATA toll markets may outweigh the benefit to consumers.

9. Limitation on Freeze Mechanisms for Resold Services

138. A number of commenters indicate that preferred carrier freeze mechanisms will not prevent all unauthorized carrier changes.⁴²⁵ Specifically, and as described above, when a subscriber changes to a new carrier that has the same CIC as the original carrier -- such as a change from a facilities-based IXC to a reseller of that facilities-based IXC -- the execution of the change order is performed by the facilities-based IXC, not the subscriber's LEC.⁴²⁶ Where such a change is made without the subscriber's authorization, it is referred to as a "soft slam." In a soft slam, the LEC does not make any changes in its system because it will continue to send interexchange calls from that subscriber to the same facilities-based IXC, using the same CIC. Since the soft-slam execution is not performed by the LEC and the LEC may not even be notified of the change, the LEC's preferred carrier freeze mechanism would not prevent such a change. We seek comment in the attached Further Notice of Proposed Rulemaking about

against slamming for one year under AT&T's proposal."); NYSDPS Comments at 8-9; NCL Comments at 8.

⁴²⁴ See, e.g., New Jersey Board of Public Utilities, *Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis*, Docket No. TX94090388 (June 3, 1997); California Public Utilities Commission, *Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision 97-04-083 (Apr. 23, 1997); Tex. Admin. Code Title 16, § 23.103 (prohibiting freezes for intraLATA toll services until subscribers receive notice of equal access).

⁴²⁵ See, e.g., NYSDPS at 9.; Ameritech Petition Comments at 17; U S WEST Reply Comments at 11, n.28.

⁴²⁶ See *supra* discussion on Definition of "Submitting" and "Executing" Carriers.

issues concerning resellers and CICs, including alternative methods for preventing switchless resellers from circumventing a subscriber's preferred carrier freeze protection through soft slams.⁴²⁷ We encourage commenters to address these issues in detail.

⁴²⁷

See infra discussion in Further Notice of Proposed Rulemaking, Resellers and CICs.

APPENDIX A

RULES AMENDED

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The title of Part 64, Subpart K, is amended to read as follows:

Subpart K - Changes in Preferred Telecommunications Service Providers

2. Part 64, Subpart K, is further amended by redesignating section 64.1100 as section 64.1150, and modifying new section 64.1150 to read as follows:

§64.1150 Verification of Orders for Telecommunications Service

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

- (a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of section 64.1160; or
- (b) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or
- (c) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(d) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

3. Part 64, Subpart K, is further amended by redesignating section 64.1150 as section 64.1160, and modifying new section 64.1160 to read as follows:

§64.1160 Letter of Agency Form and Content

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

4. Part 64, Subpart K, is further amended by adding new sections 64.1100, 64.1170, 64.1180, and 64.1190 to read as follows:

§ 64.1100 Changes in Subscriber Carrier Selections

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining: (A) authorization from the subscriber, and (B) verification of that authorization in accordance with the procedures prescribed in section 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this Subpart shall be defined as compliance with subsections (a) and (b) of this section, as well with section 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this Subpart shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Subpart.

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in section 64.1170 of this Subpart. The remedies provided in this Subpart are in addition to any other remedies available by law.

(d) Subscriber Liability for Charges. Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this Subpart is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the

subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in section 64.1170 of this Subpart.

(3) If the subscriber has been absolved of liability as prescribed by this subsection, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) Definitions. For the purposes of this Subpart, the following definitions are applicable:

(1) Submitting carrier: a submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) Executing carrier: an executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) Authorized carrier: an authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made

without authorization verified in accordance with the verification procedures specified in this Subpart.

§ 64.1170 Reimbursement Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

(1) Proof of verification of the subscriber's authorization to change carriers; or

(2) The following:

(A) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(B) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(C) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) **Subscriber Refunds or Credits.** Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(A), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the

unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) Restoration of Premium Programs. Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

§ 64.1180 Investigation Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with section 64.1100(d) of this Subpart.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this Subpart.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

§ 64.1190 Preferred Carrier Freezes

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of section 64.1190(d)(3); or

(B) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv).

Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records

the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with section 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.